

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 3:06-CR-719
Plaintiffs,) Toledo, Ohio
v.) May 13, 2008
MOHAMMED AMAWI, ET AL.,)
Defendants.)

TRANSCRIPT OF JURY TRIAL, VOLUME 49
BEFORE THE HONORABLE JAMES G. CARR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Gregg N. Sofer
David I. Miller
Jerome J. Teresinski
U.S. Department of Justice
10th & Constitution Avenue, NW
Washington, DC 20530
(202) 353-3464

Thomas E. Getz
Justin E. Herdman
Office of the U.S. Attorney
801 Superior Avenue, W
Cleveland, Ohio 44113
(216) 622-3840

For the Defendant Amawi: Timothy Ivey
Edward Bryan
Amy Cleary
Jonathan Whitmer-Rich
Office of the Federal Public Defender
750 Skylight Office Tower
1660 West Second Street
Cleveland, Ohio 44113
(216) 522-4856

1 Elias Muawad
2 Muawad & Muawad
3 Suite 209
36700 Woodward Avenue
4 Bloomfield Hills, Michigan 48304
(248) 594-4700

5 For the Defendant
6 El-Hindi:

Charles M. Boss
Boss & Vitou
111 West Dudley Street
Maumee, Ohio 43537
(419) 893-5555

7
8 Stephen D. Hartman
Kerger & Kerger
Suite 201
33 South Michigan Street
Toledo, Ohio 43602
(419) 255-5990

11 Alek H. El-Kamhawy
12 Raslan, El-Kamhway & Pla
Suite 3FE
1700 East 13 Street
Cleveland, Ohio 44114
(216) 928-1500

14 For the Defendant
15 Mazloun:

David L. Doughten
4403 St. Clair Avenue
Cleveland, Ohio 44103-1125
(216) 361-1112

17 Jeffrey J. Helmick
18 Helmick & Hoolahan
2nd floor
1119 Adams Street
Toledo, Ohio 43624-1508
(419) 243-3800

21 Mohammed Abdrabboh
1620 Ford Avenue
Wyandotte, Michigan 48192
(734) 283-7000

24 Court Reporter:

Angela D. Nixon, RPR, CRR
1716 Spielbusch Avenue
Toledo, Ohio 43624

(419) 260-5259

Proceedings recorded by mechanical stenography, transcript
produced by notereading.

1 THE COURT: Mr. Teresinski, who is your next
2 witness?

3 MR. TERESINSKI: United States of America is
4 going to call Toledo Police Officer Michael Stewart to the
5 witness stand, and then also another police officer from
6 Toledo, David Lamberger. Both are going to testify
7 regarding their interactions with the defendant
8 Mr. Mohammed Amawi on May 2nd, 2005 and May 4th, 2005,
9 respectively.

10 THE COURT: Okay.

11 MR. TERESINSKI: May I proceed, Your Honor?

12 THE COURT: Yes.

13 MR. TERESINSKI: Thank you, sir.

14 Police Officer Michael Stewart.

15 MICHAEL STEWART,
16 was herein, called as if upon examination, was first duly
17 sworn, as hereinafter certified, and said as follows:

18 THE COURT: And Officer, you should slide your
19 chair up so you're about this distance from the microphone
20 and speak loudly and clearly, please.

21 THE WITNESS: Yes.

22 THE COURT: And will you tell the ladies and
23 gentlemen and me your name?

24 THE WITNESS: Michael Stewart.

25 THE COURT: S-T-E-W-A-R-T?

1 THE WITNESS: Yes.

2 THE COURT: And you're a Toledo police officer?

3 THE WITNESS: Yes.

4 THE COURT: How long have you worked for the
5 Toledo Police Department?

6 THE WITNESS: Twenty-two years.

7 THE COURT: And what is your current assignment?

8 THE WITNESS: Patrolman, northwest district
9 station.

10 THE COURT: And back in May of 2005, what was
11 your assignment?

12 THE WITNESS: Patrolman, northwest district
13 station.

14 THE COURT: And at some point during that time
15 you had an encounter with one of the defendants; is that
16 correct?

17 THE WITNESS: Yes.

18 THE COURT: Is that Mr. Amawi?

19 THE WITNESS: Yes.

20 THE COURT: And do you see him in the courtroom
21 today?

22 THE WITNESS: Yes.

23 THE COURT: Okay. And is he sitting over at
24 counsel table?

25 THE WITNESS: Yes.

1 THE COURT: Record should show that he's
2 identified Mr. Amawi. Okay.

3 MR. TERESINSKI: May I proceed, Your Honor?

4 Thank you.

5 DIRECT EXAMINATION

6 BY MR. TERESINSKI:

7 Q. Good afternoon. Were you working as a
8 Philadelphia -- strike that. That's habit.

9 Were you working as a Toledo police officer back
10 on May 2nd, 2005?

11 A. Yes.

12 Q. And were you in uniform on that date and riding
13 in a marked patrol car?

14 A. Yes.

15 Q. And what shift were you working that day?

16 A. Day shift.

17 Q. And during the course of your official duties,
18 did you come in contact with the defendant Mohammed Amawi?

19 A. Yes.

20 Q. And was that in response to a 911 call to go to
21 AZ Travel in Toledo?

22 A. Yes.

23 Q. And what is the address for AZ Travel?

24 A. 4110 Secor.

25 Q. And could you tell the members of the jury what

1 the nature of the 911 call was that brought you to that
2 location?

3 A. It was a call about suspicious people following
4 him.

5 Q. Okay. And did you have contact and interactions
6 with Mr. Amawi on that date?

7 A. Yes.

8 Q. And describe the nature and circumstances of
9 those interactions.

10 A. He was upset and wanted to find out who was
11 following him. He said he'd been followed on several
12 occasions by several different vehicles with different
13 people driving the vehicles.

14 Q. Did he describe the vehicles?

15 A. One was a gold SUV. I think the other one was a
16 darker SUV and one was a Honda Civic.

17 Q. Did he, in fact, give you a license plate for one
18 of those vehicles?

19 A. Yes.

20 Q. And did he indicate whether it was -- did he
21 describe the people who were following him in any way?

22 A. He said there were two white males and a white
23 female.

24 Q. And did he tell you anything else about being
25 followed?

1 A. He had been followed several different times, and
2 at one point he said that someone was following his mother
3 driving his car.

4 Q. Okay. What else did Mohammed Amawi tell you at
5 AZ Travel?

6 A. He pointed out a telephone pole across the street
7 and stated that he was being filmed.

8 Q. Okay. And did you do anything to calm his
9 concerns?

10 A. I told him if he sees these people again, he'd
11 have to call us, because I have no idea what's going on.

12 Q. And did you write down your information in the
13 report as you normally would?

14 A. Yes.

15 Q. I have nothing further. Thank you.

16 THE COURT: Any questions?

17 CROSS EXAMINATION

18 BY MR. IVEY:

19 Q. Officer Stewart, just a few questions. The call
20 that was made, that was on May the 2nd, 2005; is that
21 correct?

22 A. Yes.

23 Q. And one of the things that Mr. Amawi indicated to
24 you was that he felt he had been followed on several
25 occasions prior to this time, correct?

1 A. Yes.

2 Q. And so since this was early May of 2005, that
3 would be back well into April, at least several weeks prior
4 to this date, he had also felt he was being followed?

5 A. I believe he said he was followed that day, but I
6 don't know exactly the dates that he was followed.

7 Q. I'm not asking you the dates, but did the --
8 during the call did he indicate to you he had been followed
9 for several weeks prior to this time?

10 A. I don't remember if he said several weeks, but he
11 said several times.

12 Q. Okay. Several times prior to May 2nd?

13 A. Yes.

14 Q. Okay. Now, when these calls come out, there is a
15 written record made, an incident report of what transpired
16 in the call; is that correct?

17 A. Not always, but I did make a report form. He
18 asked me to make a report and I made a report.

19 Q. Okay. You received the call initially by
20 dispatcher, correct?

21 A. Correct.

22 Q. And that dispatcher tells you the general nature
23 of the call you were going out on; is that correct?

24 A. Yes.

25 Q. And the dispatcher will also give you facts, some

1 basic facts about the calls they may feel you need to know,
2 correct?

3 A. Yes.

4 Q. Okay. I'm going to show you a written record. I
5 guess this is defense exhibit -- I have no idea what the
6 number was.

7 MR. WHITMER-RICH: A-11.

8 BY MR. IVEY:

9 Q. Defense A-11, I'm just going to show this to you
10 to see if it refreshes your recollection about whether or
11 not you were informed he was followed for the past few
12 weeks.

13 A. Yes.

14 Q. So does that help your memory as to whether or
15 not Mr. Amawi indicated he felt he was being followed the
16 past few weeks?

17 A. Yes.

18 Q. And that, in fact, is what he indicated. At
19 least that's what the written report indicated to you?

20 A. Yes.

21 Q. Okay. Thank you, officer.

22 THE COURT: Any other questions?

23 MR. TERESINSKI: No, Your Honor.

24 THE COURT: Okay.

25 Officer, you may step down.

1 MR. TERESINSKI: United States of America calls
2 Police Officer David Lamberger.

3 MR. IVEY: Your Honor, can we approach for a
4 moment, please?

5 THE COURT: Sure.

6 (A sidebar conference was had on the
7 record.)

8 THE COURT: Your office is going to be short one
9 assistant if we designated -- off the record.

10 (A brief discussion was had off the record.)

11 MR. IVEY: I just wanted to clarify the record.
12 I went back to the trial table and looked at realtime. The
13 court reporter wrote down I had asked was he followed the
14 past two weeks, but actually I asked him if it was the past
15 few weeks and I just wanted to make sure that was on the
16 record.

17 DAVID LAMBERGER,
18 was herein, called as if upon examination, was first duly
19 sworn, as hereinafter certified, and said as follows:

20 THE COURT: And Officer, if you'll be about this
21 distance from the microphone and speak loud so everybody
22 can hear you. And will you tell me and the ladies and
23 gentlemen of the jury your name?

24 THE WITNESS: Officer David Lamberger.

25 THE COURT: And how do you spell your last name?

1 THE WITNESS: L-A-M-B-E-R-G-E-R.

2 THE COURT: Okay. And you're currently employed
3 by the Toledo Police Department?

4 THE WITNESS: Yes, I am.

5 THE COURT: How long have you been with the
6 department?

7 THE WITNESS: Eleven years.

8 THE COURT: What is your current assignment?

9 THE WITNESS: I patrol downtown.

10 THE COURT: And on or about sometime in May of
11 2005, about three years ago, what was your assignment?

12 THE WITNESS: I patrolled the northwest district
13 station.

14 THE COURT: Okay. And were you with anybody?
15 Did you have a partner at that time?

16 THE WITNESS: My partner was John Eischen.

17 THE COURT: Okay. And did you encounter one of
18 the defendants in this case?

19 THE WITNESS: Yes, I did.

20 THE COURT: Do you see him in the courtroom?

21 THE WITNESS: Yes, I do.

22 THE COURT: And do you know his name?

23 THE WITNESS: Mohammed Amawi.

24 THE COURT: The record should will show that the
25 officer identified the defendant.

1 Mr. Teresinski, you may begin.

2 MR. TERESINSKI: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. TERESINSKI:

5 Q. Officer, good afternoon. Thanks for coming in.

6 Back on May 4th of 2005, were you in uniform in a
7 marked patrol car that day?

8 A. Yes, I was.

9 Q. And you worked for the Toledo Police Department?

10 A. Yes.

11 Q. And what time did your shift start that day?

12 A. 2:30 in the afternoon.

13 Q. And did you and your partner, Officer Eischen --
14 you mentioned you came in contact with an individual who
15 identified himself as Mohammed Amawi?

16 A. That's correct.

17 Q. And that was in response to a 911 call?

18 A. Yes.

19 Q. And what was the -- could you describe the nature
20 of the call and what happened?

21 A. Well, we were dispatched to Central Avenue and
22 Executive Parkway to meet a complainant in a parking lot.
23 He was concerned he was being followed.

24 Q. Could you describe to the members of the jury
25 your interaction with Mohammed Amawi at that time?

1 A. We pulled into the lot. We saw one person
2 standing there. It was a man, smaller body type, wearing
3 black clothing, had a beard, and we asked him, Are you our
4 caller? And he said, yes, and he explained that he was
5 concerned because he felt he was being followed.

6 Q. Okay. And did he give you information regarding
7 his identification, Social Security Number, address?

8 A. No. We didn't get into that.

9 Q. What did he do physically, did he tell you
10 anything?

11 A. He said that he was convinced he was being
12 followed, that he suspected it was either the government or
13 somebody else. He said if it was the government, that was
14 fine because that's what the government's supposed to do.
15 He was worried it was somebody else. And furthermore, that
16 the person that was following him was parked across the
17 parking lot.

18 Q. Did you, based on your interactions with
19 Mr. Amawi, go over and investigate the vehicle?

20 A. Yes, we told him we would go investigate the
21 vehicle he pointed out and go back and tell him what we
22 found out.

23 Q. When you came back, what did you tell Mr. Amawi?

24 A. That it was a gentleman waiting for his wife to
25 come out of the business.

1 Q. Did you have any further contact with Mr. Amawi
2 that day?

3 A. No. We concluded our assistance, and he thanked
4 us, and we left in our patrol car.

5 MR. TERESINSKI: And I don't think I have any
6 more questions at this time. Thank you very much.

7 Thank you, Your Honor.

8 MR. IVEY: Your Honor, we have no questions for
9 the witness.

10 THE COURT: Okay. Anybody any questions?

11 MR. BOSS: No, thank you.

12 THE COURT: Officer, you may step down. You may
13 go or you're welcome to stay. It's entirely up to you.

14 And the government's next witness is?

15 MR. TERESINSKI: Let me confer with my colleague,
16 Your Honor. May I also take leave to step outside and
17 dismiss the police officer?

18 THE COURT: No problem.

19 MR. GETZ: At this time United States of America
20 calls Special Agent Charles Holloway.

21 CHARLES HOLLOWAY,
22 was herein, called as if upon examination, was first duly
23 sworn, as hereinafter certified, and said as follows:

24 THE COURT: And will you tell the ladies and
25 gentlemen your name, please.

1 THE WITNESS: Charles R. Holloway,
2 H-O-L-L-O-W-A-Y.

3 THE COURT: And are you currently employed?

4 THE WITNESS: Yes, sir. I'm a special agent with
5 the Federal Bureau of Investigation.

6 THE COURT: And you have a particular location or
7 office from which you are resigned -- assigned and location
8 to which you are assigned?

9 THE WITNESS: Yes, sir. I'm assigned to the
10 office in Sandusky, Ohio.

11 THE COURT: And is that part of what they call
12 the Toledo Regional Agency?

13 THE WITNESS: It's part of the Cleveland
14 division. Our immediate supervisor is located here in
15 Toledo.

16 THE COURT: How long have you worked for the FBI?

17 THE WITNESS: Approximately 28 1/2; 25 of those
18 as a special agent.

19 THE COURT: Okay.

20 MR. GETZ: Thank you, Your Honor.

21 THE COURT: And Agent Holloway, I'd ask you if
22 you can sit up just a little bit, and if you can pull the
23 chair up, you've got to be about this distance. If you get
24 a millimeter or so closer, you'll have feedback and
25 2 millimeters or so back, we have trouble hearing you. But

1 actually, it's a vastly improved system from what we once
2 had.

3 About that distance, you may have to lean
4 forward. Pull your chair in just a tad further and ladies
5 and gentlemen also are very good about letting you know
6 when they can't hear you, which is good.

7 MR. GETZ: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. GETZ:

10 Q. Agent Holloway, you indicated you've been
11 employed by the FBI for, I believe you said, about 28 1/2
12 years?

13 A. Yes, sir.

14 Q. So you were so employed on February 19th, 2006?

15 A. Yes, sir.

16 Q. And you recall if you were working on that date?

17 A. Yes, I was.

18 Q. Now, on that date, February 19th, 2006, did you
19 become involved in this case in some manner?

20 A. Yes, I did.

21 Q. And can you explain for the jury in what manner
22 you became involved in this case?

23 A. Yes. I was one of three individuals who were
24 assigned to interview Mr. El-Hindi.

25 Q. And when you say Mr. El-Hindi, you're referring

1 to?

2 A. Marwan El-Hindi.

3 Q. And do you see the person you know?

4 MR. HARTMAN: We'll stipulate.

5 THE COURT: He's in the courtroom, right?

6 THE WITNESS: Yes, sir.

7 BY MR. GETZ:

8 Q. And again, you indicated on February 19th, 2006
9 you participated in interviewing the defendant Marwan
10 El-Hindi?

11 A. Yes, I did.

12 Q. And where did that interview take place?

13 A. At the FBI office in Toledo.

14 Q. And who, besides yourself and defendant El-Hindi,
15 were present during that interview?

16 A. Ken Stambaugh, who was an investigator from the
17 Ohio State Highway Patrol assigned full-time to the Joint
18 Terrorism Task Force and Special Agent Jack Davis from the
19 Toledo office from the United States Secret Service.

20 Q. And was Agent Davis also assigned to the
21 Terrorism Task Force, if you know?

22 A. I believe he was.

23 Q. And what about yourself?

24 A. I was not a full-time member of it.

25 Q. Okay. Now, approximately what time on that day

1 did the interview begin?

2 A. Approximately 8:30, and it was a short break and
3 then we resumed approximately ten minutes later.

4 Q. Okay. So you arrived at the -- the FBI office
5 here in Toledo somewhere around 8:30 in the morning?

6 A. I was there before that, but Mr. El-Hindi was
7 brought into the office around that time.

8 Q. And what was the first thing that happened in the
9 course of that interview?

10 A. We introduced ourselves to him, indicated where
11 we were employed, both by telling him, by displaying
12 credentials. Then he was advised by Ken Stambaugh of why
13 he was there and the nature of the charges against him.

14 Q. And then what happened?

15 A. He asked if he could pray -- well, we told him
16 that we wanted to speak with him concerning the case
17 against him. He indicated he was willing to do that, but
18 asked if we would allow him to pray before we actually
19 commenced with the interview, and we allowed him to do
20 that.

21 Q. Do you recall approximately how long the prayer
22 time went?

23 A. Eight or ten minutes, approximately.

24 Q. And then when that was finished -- well, first of
25 all, strike that.

1 Let me ask you this: In the -- in conducting the
2 interview of defendant El-Hindi, what language was used?

3 A. English.

4 Q. And did the defendant at any time request to
5 conduct that interview in another language?

6 A. He did not.

7 Q. Did he appear to understand and freely converse
8 you with in English during the course of that interview?

9 A. Yes. He appeared to understand everything we
10 were asking him, and he was able to articulate his answers
11 in English very clear.

12 Q. And was the defendant advised of his
13 constitutional or Miranda rights?

14 A. Yes, he was. After he -- he -- an opportunity to
15 say his -- do his prayers, he was read his Miranda rights
16 by Ken Stambaugh, who read those to him from the standard
17 form that we used called the advice of rights form.

18 MR. GETZ: May I approach, Your Honor?

19 THE COURT: Okay.

20 MR. HARTMAN: Twenty-seven, Tom?

21 MR. GETZ: Exhibit 207.

22 BY MR. GETZ:

23 Q. Agent Holloway, I've placed before you a document
24 marked Government Exhibit Number 207. Do you recognize
25 that?

1 A. Yes, I do.

2 Q. And can you tell the jury what that is?

3 A. Yes. This is the advice of rights form that was
4 read to Mr. El-Hindi at the time of the interview by Ken
5 Stambaugh and was subsequently signed by him and witnessed
6 by myself and Ken Stambaugh.

7 Q. During the course of having that form or the
8 rights read to the defendant from that form, did he appear
9 to understand what was being explained to him?

10 A. Yes, he did.

11 Q. And did he ask any questions about any of the
12 rights that were explained to him?

13 A. No, he did not. He indicated he understood his
14 rights and was willing to speak with us without an attorney
15 present.

16 Q. And he agreed to speak with you after having been
17 advised of those rights?

18 A. Yes, he did.

19 Q. Did he sign the form?

20 A. Yes, he did.

21 MR. GETZ: Permission to publish that, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. GETZ:

25 Q. I'm going to direct your attention to the

1 upper-right corner.

2 A. Yes, sir.

3 Q. And it indicates the place of the interview; is
4 that correct?

5 A. Yes, it does.

6 Q. And what does -- what does that statement -- what
7 does it represent?

8 A. Toledo R.A., which stands for the Toledo Resident
9 Agency, which is what the Toledo office of the FBI is
10 called.

11 Q. Okay. And then the date of the interview, is
12 that reflected there?

13 A. Yes, February 19th, 2006.

14 Q. Okay. And what time is reflected?

15 A. The time that the advice of rights started being
16 given to Mr. El-Hindi was 8:40 a.m.

17 Q. Okay. And then what follows under the section
18 "your rights," those were the rights that were read to and
19 explained to the defendant?

20 A. Yes.

21 Q. And there are a number of signature lines there.
22 Directing your attention to the top-most line on the right
23 side of the page.

24 A. Yes.

25 Q. There's a signature there?

1 A. Yes.

2 Q. And did you observe the person who placed their
3 signature on that line?

4 A. Yes, I did.

5 Q. And who's signature is that?

6 A. Marwan El-Hindi.

7 Q. And your signature, is that representative also
8 on that form?

9 A. Yes, on the second witness line.

10 Q. Okay. And on the witness signature lines,
11 there's a time indicated when those were signed?

12 A. Yes, 8:42 a.m.

13 Q. Now, during the course of the interview, was the
14 defendant threatened or coerced in any way to sign that
15 form or to participate in the interview?

16 A. No, he was not.

17 Q. Was he -- were any promises made to him that he
18 would receive some award or benefit or gain something by --
19 by participating in the interview or signing the form?

20 A. No, sir.

21 Q. During the course of the interview, did you or
22 any of the other two agents that were present take your
23 guns out or display any weapons of any kind?

24 A. No, sir.

25 Q. Approximately how long did the interview last?

1 A. From beginning to end, approximately 2 1/2 hours.
2 There was approximately a half-hour break in the middle of
3 the interview.

4 Q. So it was not a nonstop interview?

5 A. That's correct. Approximately 10:30, we took
6 about a half-hour break, including Mr. El-Hindi, to get
7 something to drink and to use the restroom and so forth.

8 Q. And then when the interview resumed after that
9 half-hour break, approximately how long did it go?

10 A. Approximately another hour and ten minutes.

11 Q. Now, during the course of that interview -- well,
12 first, strike that.

13 Were you present for the entire interview?

14 A. Yes.

15 Q. Was the defendant made aware -- I believe you
16 indicated earlier that -- that one of the agents did
17 explain to him the reason for the interview and the
18 charges. Were you present when he was made aware of the
19 purpose of the interview and the charges he was facing?

20 A. Yes, I was.

21 Q. And did he appear to understand those?

22 A. Yes, he did.

23 Q. Now, during the course of that interview, did you
24 inquire of the defendant anything about his overseas
25 travel?

1 A. Yes, we did.

2 Q. And what did the defendant tell you about
3 overseas travel?

4 A. He indicated that besides trips back home to
5 Jordan, he had made two trips to Egypt, one of those for
6 pleasure and one for the purpose of getting married. And
7 we asked him whether or not he had any overseas travel
8 besides those, and he indicated nothing other than to
9 Canada.

10 Q. Did -- in the course of his discussion of
11 overseas trips, and specifically his travel to Egypt, did
12 he mention anything about rescuing anyone in Egypt?

13 A. No, sir.

14 Q. Did he mention the name Ahmed or Zubair or
15 Khaleel?

16 A. No, sir.

17 Q. Did the defendant talk to you or give you any
18 information regarding his e-mail communications?

19 A. Yes, he did.

20 Q. And did he provide you any e-mail addresses?

21 A. Yes. We asked him for all of the e-mail
22 addresses that he used at that time and prior to that, and
23 he gave us three e-mail addresses that he used.

24 Q. And he represented that those three e-mail
25 addresses were the only e-mail addresses he used?

1 A. Yes, sir.

2 Q. And do you recall what those e-mail addresses
3 were?

4 A. Yes. The first one was El-Hindi@yahoo.com,
5 El-Hindi@yahoo.come, and Marwan@European-MSS.com.

6 THE COURT: What were the first two? They
7 sounded the same.

8 THE WITNESS: One was -- both was El-Hindi. One
9 was at hotmail.com and one was at Yahoo.com. Sorry, I may
10 have said the same place.

11 THE COURT: And last one was?

12 THE WITNESS: It was Marwan@European-MSS.com.

13 BY MR. GETZ:

14 Q. Did the defendant give you or ever provide you
15 with an e-mail address that he used of
16 MarwanEl-Hindi@hotmail.com?

17 A. No, he did not.

18 Q. Did he provide you any other e-mail addresses
19 that had relevance to his communications?

20 A. Yes, he did.

21 Q. And what e-mail or whose e-mail did he represent
22 that to you?

23 A. During the course of the interview, the name of
24 Darren Griffin came up, and he indicated that he -- he --
25 e-mail communication with Darren Griffin. And we asked him

1 what e-mail address Darren Griffin utilized and he advised
2 DarrenGriffin@SBC.

3 Q. And was it the only e-mail address that he gave
4 for Darren Griffin?

5 A. Yes, it was.

6 Q. He did not provide you an e-mail address of
7 Abu_Jihad@SBCGlobal.net?

8 MR. HARTMAN: Objection, Your Honor. May we
9 approach?

10 THE COURT: Sure.

11 (A sidebar conference was had on the
12 record.)

13 MR. HARTMAN: Basis for the objection is that 302
14 does, in fact, say that he gave the e-mail address of
15 DarrenGriffin@hotmail.com, but he doesn't say that. He
16 said that was the only one he used. And I don't think it's
17 proper if he didn't say it, unless Mr. El-Hindi said that's
18 the only one he used to -- to go into.

19 THE COURT: No. I think the fact that it's on
20 the 302, doesn't mean he didn't do it or say it. If you
21 want to ask him did I prepare a report? During the report
22 did you note everything important? There's no mention that
23 the failure to say that, you can ask in cross, but I don't
24 think there's any reason that he can't testify, no, he
25 didn't tell me anything about that. I mean, I'm not

1 sure -- maybe I'm missing something.

2 MR. HARTMAN: He made it sound like that was the
3 only -- he made it sound like that was the only e-mail
4 address that -- he made it sound like El-Hindi represented
5 that was the only e-mail address that Griffin used.

6 MR. GETZ: Your Honor, I believe the question was
7 did he give you any other e-mail addresses for him and that
8 was his response. They can certainly ask him if he
9 indicated that address that he gave was the only one. I
10 don't believe --

11 THE COURT: Yeah, I thought the question was did
12 you give -- did he give you a specific -- you rattled it
13 off kind of fast -- and he said no. Did you ask any other
14 e-mail addresses? Maybe I missed that. I don't think you
15 did.

16 MR. GETZ: Not after that question.

17 THE COURT: Had you asked before?

18 MR. GETZ: I asked if he had --

19 THE COURT: Fine.

20 MR. GETZ: -- provided an e-mail address for him.
21 He gave you that one. I asked, did he give you this one?
22 He said, no.

23 THE COURT: That's what I thought.

24 I don't get the objection, I'm sorry.

25 MR. HARTMAN: The 302 doesn't say that that was

1 the only one he had. It doesn't say they asked if he had
2 any others.

3 THE COURT: I think you can ask that on
4 cross-examination. I mean, there doesn't have to be
5 constant congruity between a prior report and the
6 testimony. To the extent that there isn't, you may have --
7 you may have something to cross-examine about or you may
8 not. That's up to you, but the fact that something is not
9 in the 302 doesn't preclude him from testifying about
10 whatever.

11 MR. HARTMAN: Got it.

12 THE COURT: As long as it's otherwise admissible.

13 (Sidebar concluded.)

14 THE COURT: Okay. Objection's overruled and the
15 answer may stand.

16 And you may continue.

17 BY MR. GETZ:

18 Q. Agent Holloway, during the course of the
19 interview, did the topic or the subject of violent Jihad or
20 the insurgency come up?

21 A. Yes, it did.

22 Q. And did the defendant provide you with any
23 information in response to your questions about his
24 knowledge of those topic areas or anyone involved in those?

25 A. Yes we had asked him whether or not he knew

1 anybody who was in Iraq fighting with the insurgency. He
2 said he did not. We asked him whether or not he knew
3 anybody in Afghanistan fighting against U.S. troops, and he
4 indicated he did not.

5 And we asked him whether or not he ever engaged
6 in any discussions with anybody else concerning traveling
7 to Iraq or joining the insurgency or travel to Afghanistan
8 to fight against the U.S. troops, and he indicated he had
9 not discussed that with anyone and never considered himself
10 going over to do any of those things. He also indicated
11 that had somebody had such a discussion with him he would
12 have reported it to the FBI.

13 Q. Okay. He volunteered that?

14 A. Yes, he did.

15 Q. Related to that topic, was there any discussion
16 of any kind of -- any kind of training or his involvement
17 in training?

18 A. Yes, there was.

19 Q. And what did he tell you?

20 A. We asked him a number of things. We asked him
21 whether or not he ever downloaded any training manuals, and
22 he indicated that he had not. We also asked him whether or
23 not he had ever discussed with anyone training in the areas
24 of handguns, sniper training, explosives, IED training,
25 tactical training, and he initially denied having any

1 discussions with anyone concerning those topics.

2 Q. Now, you had mentioned that at some point during
3 the interview the name Darren Griffin came up?

4 A. Yes, it did.

5 Q. Do you recall how that occurred?

6 A. I don't remember exactly whether at some point
7 Ken Stambaugh brought that name up or after we continued to
8 discuss this training issue with Mr. El-Hindi, he
9 ultimately brought up Mr. Griffin's name, but we repeatedly
10 asked him about this training issue, whether or not he had
11 ever received or solicited any firearms training. And he
12 eventually indicated that he -- he -- discussions with
13 Darren Griffin about firearms training.

14 Q. And what were those discussions, what did he tell
15 you those discussions were?

16 A. He indicated that he had two or three
17 conversations with Darren Griffin about Griffin teaching
18 him how to shoot. We asked him who had initiated those
19 conversations, he initially said that Mr. Griffin had
20 approached him about it, but then as the ven -- but then as
21 the interview continued, he said he couldn't remember
22 whether he had first approached the subject or Mr. Griffin
23 had. He indicated that the purpose of wanting to learn to
24 shoot was for hunting and/or personal protection.

25 We asked him whether or not he was hunter, and he

1 said he was not a hunter. We asked him if he had ever been
2 hunting, he said he'd never been hunting. We asked him if
3 he owned any firearms, and he said he did not personally
4 own any firearms.

5 Q. Did he bring up the topic or the issue of a
6 security business or bodyguard protection services in the
7 course of that discussion about the training?

8 A. Did not.

9 Q. Did he indicate to you -- and by "he," I mean the
10 defendant Marwan El-Hindi -- during the course of this
11 interview, that he was aware of Darren Griffin's
12 background?

13 A. Yes, he did. He said he knew that he had a
14 military background, that he thought he had possibly been a
15 Navy Seal.

16 Q. Did the defendant indicate to you that besides
17 these conversations that he had about the training and
18 learning to shoot, that he had any other kind of
19 relationship or interaction with Darren Griffin?

20 A. We asked him whether or not he had ever traveled
21 with Darren Griffin, and initially, he said, no. And then
22 we pressed him on that, and eventually, he indicated that
23 had he and Griffin had traveled to several restaurants
24 together, and that Griffin had accompanied him on one trip
25 to Michigan to meet with his certified public accountant.

1 Q. And did he tell you what the purpose for that
2 trip to the accountant was?

3 A. He did not.

4 Q. Did he discuss with you any kind of business
5 relationship with Darren Griffin?

6 A. He indicated -- we asked him specifically whether
7 or not he indicated he had any business arrangements with
8 Darren Griffin or ever discussed them. He denied having
9 any business arrangements with him or discussing any
10 business ventures, other than he said he had considered
11 utilizing Mr. Griffin as a recruiter for a business that he
12 and his brother were operating, which was where they were
13 recruiting students to attend medical schools overseas.
14 And he indicated he had considered recruiting Darren to be
15 a recruiter for that medical school and that is the only
16 business discussions he said he ever had with Darren
17 Griffin.

18 Q. And during the -- these conversations that he was
19 telling you about that he had with Darren Griffin, about
20 shooting and learning too shoot and training, did he
21 indicate that there were any other kinds of discussions
22 about other training-related matters?

23 A. We discussed suicide bomber vests with him. We
24 asked him whether or not he had ever downloaded any
25 suicide -- any photos or information on suicide bomber

1 vests. He indicated that he had not. Subsequently, he
2 advised that he had looked at suicide bomber vests online,
3 but had never knowingly solicited any information on them
4 online. We also asked him whether or not he had ever
5 downloaded any information on vests onto discs or forwarded
6 that information to anybody else, and he denied ever doing
7 those.

8 Q. Did he indicate, in terms of his relationship
9 with Darren Griffin, that they had ever visited each other
10 in their homes?

11 A. Yes, he did. He indicated that he had been to
12 Darren Griffin's residence on two or three occasions.

13 Q. Now, in addition to his discussion of Darren
14 Griffin, did he bring up -- or during the course of the
15 interview were any other individuals brought up?

16 A. Yes. Just the other thing to -- on Griffin, we
17 also specifically asked him whether he ever discussed any
18 military Jihad-type topics with Griffin. He denied doing
19 that. We asked him whether or not he had ever approached
20 Griffin about providing firearms training to anybody else,
21 and he also denied that.

22 As far as your last question goes, yes, there was
23 also a discussion about a relationship he had with a
24 individual named Mohammed.

25 Q. And when he indicated that individual named

1 Mohammed, did he give you any further identification?

2 A. He described him for me. He said he did not know
3 Mohammed's last name. He described him as an Arabic male
4 with long hair with a receding hairline and full beard.

5 Q. Did he indicated to you how it was that he knew
6 this Mohammed?

7 A. Yes, he did. He indicated he first met him at
8 Lebanese Tiger bakery here in Toledo, and subsequently, had
9 contacts with him at AZ Travel, at the mosque, and they had
10 both visited each others residences. I believe he
11 indicated that he had been to Mohammed's residence on two
12 occasions, and Mohammed had visited his residence on one
13 occasion.

14 Q. And did he indicated whether any other
15 individuals were present during any of those visits or
16 meetings?

17 A. Yes. We specifically asked him whether or not he
18 ever had any meetings where there were three people
19 present, himself, Mohammed, and Darren Griffin, and he
20 indicated that the three of them had gotten together on
21 four or five occasions, once at Mr. El-Hindi's residence,
22 once at AZ Travel where Mohammed worked, and two or three
23 times at the mosque where they prayed.

24 Q. What else did he tell you, if anything, about
25 Mohammed?

1 A. We asked him whether or not Mohammed had ever
2 expressed any anti-U.S. sentiments or stressed any
3 extremist views and he said --

4 MR. IVEY: Objection.

5 THE COURT: I would tend to agree. I think --
6 this is offered for the truth of the matter asserted or
7 simply to -- for statements made and as evidence as to
8 Mr. El-Hindi?

9 MR. GETZ: Your Honor, it's -- it's not made for
10 the truth of the matter asserted.

11 THE COURT: Okay. Ladies and gentlemen, you can
12 consider the testimony about what somebody else may have
13 said to Mr. El-Hindi, related by Mr. El-Hindi to the agent,
14 only as testimony that those -- according to Mr. El-Hindi,
15 statements were made to him, not as proof of whatever it
16 was that was being asserted in those statements.

17 MR. IVEY: Your Honor, may we approach as well?

18 THE COURT: Sure.

19 (A sidebar discussion was had on the
20 record.)

21 MR. IVEY: Your Honor, my additional -- my
22 additional objection is the Bruton problem this raises
23 because we cannot cross-examine Mr. El-Hindi about the
24 nature of statements Mr. Amawi may or may not have made to
25 put this in any context if he does not take the stand.

1 And I don't see why this is really relevant to
2 whether or not Mr. El-Hindi's incriminating himself. And
3 if it is, I think that the danger of violating Bruton
4 outweighs any implications of guilty mind on the part of
5 Mr. El-Hindi.

6 MR. GETZ: We're not asking any additional
7 questions regarding statements.

8 THE COURT: Why don't I tell them to disregard?

9 MR. GETZ: With regard to Mr. Amawi, about --
10 Your Honor, these are not fairly inculpatory statements at
11 all. Basically, what he's telling the agents -- again, not
12 offered for the truth of what -- of what Mr. Amawi said,
13 but offered to -- it's a statement that Mr. El-Hindi is
14 saying, which we believe to be false as attributing to
15 Mr. Amawi in the course of this interview to the agents.
16 The fact that it's not an inculpatory statement in regards
17 to Mr. Amawi doesn't raise a Bruton issue.

18 MR. SOFER: The point is, they asked him from
19 answering the question, Judge, and I think the answer is
20 going to be, no, he didn't express these extremist views to
21 him, so there's nothing inculpatory about Mr. Amawi. That
22 turns out to be a lie, but --

23 THE COURT: I understand. Do you want to get the
24 answer in light of the representation?

25 MR. SOFER: I assume he's going to say, no, he

1 never made a statement.

2 MR. GETZ: And that's indicated in the 302 which
3 counsel has.

4 MR. HARTMAN: My problem is if it's not offered
5 for the truth, then you get to the point that you show that
6 it's a lie. Then, eventually, you're going to have to say
7 that Amawi didn't offer the statements, and then the Bruton
8 problem comes up, doesn't it?

9 MR. SOFER: That's what the tapes are. In other
10 words --

11 THE COURT: I understand. There was no answer to
12 the question, so --

13 MR. IVEY: Well, I guess -- I'm sorry, I guess my
14 point is, maybe this will be a no harm, no foul. But I'm
15 concerned about repeated questions about what said or did
16 not say.

17 MR. SOFER: Counsel has a 302. Your Honor's seen
18 the 302 also. This particular line of questioning relates
19 to -- as I think pretty much all there is -- about
20 statements made by Mohammed Amawi, and they are -- as to
21 Mr. Amawi, they are not inculpatory, so there is no Bruton
22 problem.

23 THE COURT: I agree with that.

24 Do you want to rephrase the question?

25 (Sidebar concluded.)

1 THE COURT: You may continue.

2 MR. GETZ: Thank you, Your Honor.

3 THE COURT: Again, if he was told anything, you
4 are not to consider it as truth as to Mr. Amawi --

5 BY MR. GETZ:

6 Q. Let me ask you this as a follow-up to that
7 question before you answer: In regards to the individual
8 he identified as Mohammed, did Defendant El-Hindi indicate
9 anything in regards to any concerns he had -- strike that.
10 Let me withdraw that question.

11 Let me ask you this: During the course of these
12 meetings or discussions, Defendant El-Hindi told you about,
13 that he had in the presence of Mohammed and Darren Griffin,
14 did he indicate to you the nature of the things that they
15 talked about?

16 A. He specifically indicated that there was no
17 discussion between the three of them during these meetings
18 about traveling to Iraq and joining the insurgency, said
19 there was no discussion about traveling Afghanistan to
20 fight U.S. troops. He indicated there was no discussion
21 concerning training in regards to firearms, explosives,
22 IEDs, and tactical training. He said there was no
23 discussion between the three of them about those issues.

24 Q. And did he talk about any activities that they
25 engaged in during these meetings, or did you ask him about

1 any activities?

2 A. I'm not sure what type of activities you're
3 referring to.

4 Q. Specifically, in regards to, say, for example,
5 looking at things on the Internet?

6 A. Yes. We asked him whether or not --
7 specifically, whether he and now -- this Mohammed had ever
8 gone on the Internet together to research a particular
9 topic or look anything up, and he indicated that they had
10 not.

11 Q. At approximately what time did the interview end?

12 A. Approximately 12:10 p.m.

13 Q. So again, it was approximately about a four-hour
14 interview with about a half-hour break and some other short
15 breaks?

16 A. I think it was about 3 1/2 hours, with about a
17 half-hour break.

18 Q. Do you recall having any further involvement with
19 this investigation or this case after that day?

20 A. After that day, no, I do not.

21 MR. GETZ: Just a moment, Your Honor. No further
22 questions. Thank you.

23 MR. HARTMAN: One moment.

24 THE COURT: Sure.

25 MR. GETZ: Your Honor, at this time if I may, we

1 move to admit Government Exhibit 207.

2 MR. HARTMAN: No objection.

3 THE COURT: It will be admitted.

4 CROSS-EXAMINATION

5 BY MR. HARTMAN:

6 Q. Agent Holloway, good morning.

7 A. Good morning.

8 Q. My name is Steve Hartman. I'm one of the lawyers
9 representing Marwan El-Hindi. Just a couple of things I
10 want to make sure I'm clear about.

11 Did you say that Mr. El-Hindi told you he had
12 seen or watched a bomb vest video, but not downloaded it?

13 A. He said that he had seen suicide bomb vests on
14 the Internet, but had never downloaded anything onto a disc
15 and never forwarded the information he saw to another
16 individual. And indicated that he had never knowingly
17 solicited or sought that type of information on the
18 internet, although he had seen it on the Internet.

19 Q. Now, just -- I mean, are those his words
20 "solicited" or "sought" or are those your words? I mean,
21 did he talk that way?

22 A. Those may be my words. The gist was that he said
23 he never knowingly went on the Internet and sought
24 information about suicide bomb vests.

25 Q. Okay. You were -- did you testify that you were

1 already at the resident agency before he was brought there?

2 A. Yes.

3 Q. So you were not on the arrest team?

4 A. That is correct.

5 Q. Okay. You didn't record this interview, did you?

6 A. Did not.

7 Q. You had the capability to do so?

8 A. I assume that we could have, but in my 28 1/2
9 years at the FBI, we've never recorded interviews.

10 Q. Would you agree with me that a recording is
11 generally more accurate?

12 MR. GETZ: Objection, Your Honor.

13 THE COURT: Basis? I'll let him answer.

14 Go ahead.

15 BY MR. HARTMAN:

16 Q. Would you agree with me that a recording is
17 generally more accurate than a report based on notes taken
18 during an interview?

19 A. Well, it would be verbatim, so from that respect,
20 it would be. But I like to think our reports are pretty
21 accurate.

22 Q. I'm not saying it's not, but the report's not
23 word for word?

24 A. That's true.

25 Q. And a recording would be?

1 A. That's correct.

2 MR. HARTMAN: One moment, Judge.

3 We have no further questions. Thank you, Agent
4 Holloway.

5 THE COURT: Any other questions?

6 MR. HARTMAN: No, Your Honor.

7 THE COURT: Any redirect?

8 MR. GETZ: No, Your Honor.

9 THE COURT: Agent, you may step down. You're
10 free to go or you're welcome to stay. It's up to you.

11 And your next witness is and what are we going to
12 hear?

13 MR. SOFER: Agent William Radcliff and he's going
14 to describe briefly his involvement in the investigation of
15 this case, Judge.

16 WILLIAM RADCLIFF,
17 was herein, called as if upon examination, was first duly
18 sworn, as hereinafter certified, and said as follows:

19 THE COURT: Would you tell the ladies and
20 gentlemen your name, please?

21 THE WITNESS: I'm sorry, Your Honor?

22 THE COURT: Tell the ladies and gentlemen your
23 name, please.

24 THE WITNESS: My name is William S. Radcliff.

25 THE COURT: And you have to sit about this

1 distance from the microphone. Slide the chair up.

2 And you formerly were employed with the FBI; is
3 that correct?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And what was the period of your
6 employment?

7 THE WITNESS: I entered upon duty on March 8th,
8 1976 and retired on April 1st, 2005.

9 THE COURT: I'm sorry, when did you started
10 again?

11 THE WITNESS: March 8th, 1976.

12 THE COURT: Okay. And you retired?

13 THE WITNESS: April 1st, 2005. And --

14 THE COURT: And are you presently employed at all
15 or are you retired?

16 THE WITNESS: Basically retired, and I teach
17 part-time.

18 THE COURT: Okay. And during your period of
19 employment with the bureau, were you assigned to the office
20 here in Toledo?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And what was that period of
23 assignment?

24 THE WITNESS: I began actually in Toledo, Ohio,
25 on -- in January of 1979 until I retired.

1 THE COURT: Okay.

2 Mr. Sofer?

3 DIRECT EXAMINATION

4 BY MR. SOFER:

5 Q. Good afternoon, former Agent Radcliff.

6 A. Good afternoon.

7 Q. Would you tell the members of the jury how old
8 you are?

9 A. I'm almost 61.

10 Q. And where did you grow up?

11 A. Columbus, Ohio.

12 Q. Are you presently married?

13 A. Yes, I am.

14 Q. How long have you been married?

15 A. Thirty-four years.

16 Q. Can you tell the members of the jury basically
17 your educational background?

18 A. I have a B.A., plus 30 hours in sociology.

19 Q. And you have a B.A. What was the year you
20 graduated from college?

21 A. In 1970.

22 Q. And what school did you attend?

23 A. I attended the Ohio State University and Capital
24 university in Columbus, Ohio, but I graduated from Capital
25 University.

1 Q. What did you do after you graduated from college?

2 A. I taught high school.

3 Q. And how long did you teach high school?

4 A. Approximately, 5 1/2 years.

5 Q. Can you tell the members of the jury, after you
6 taught high school, is that when you joined the FBI?

7 A. Yes.

8 Q. And you said that was in what year?

9 A. That was in 1976.

10 Q. And I'm terrible with the numbers, from 1976 to
11 2005, how many years together?

12 A. It was a little over 29 years.

13 Q. And again, you were first assigned to what
14 location when you joined the FBI?

15 A. I was first assigned to Milwaukee division.

16 Q. About how long did you spend in Milwaukee?

17 A. Approximately, two years.

18 Q. Can you tell members of the jury what kinds of
19 cases or what you did in Milwaukee?

20 A. I was assigned to what are now called "violent
21 crimes," extortions, bank robberies, kidnappings and
22 fugitives.

23 Q. Did there come a time when your assignment
24 changed?

25 A. Yes.

1 Q. And when was that?

2 A. That was in 1978.

3 Q. And do you recall where it was that you were next
4 assigned?

5 A. Yes. I was assigned to the Washington field
6 office.

7 Q. And that's in Washington D.C.?

8 A. That is correct.

9 Q. And tell us basically what you did in the
10 Washington field office?

11 A. I worked foreign counterintelligence.

12 Q. And without getting into too many details, could
13 you give the members of the jury a basic description of
14 what foreign counterintelligence work is for an FBI agent?

15 A. Yes. Our responsibility was to locate and detect
16 foreign intelligence officers, in other words, crime spies.

17 Q. Did there come a time when you were assigned
18 here, to the resident agency in Toledo?

19 A. Yes.

20 Q. I think you told the judge this, what year was
21 that?

22 A. That was actually in January of 1979.

23 Q. And again, can you give the members of the jury a
24 basic idea of what you were asked to do when you were
25 assigned here to the R.A.?

1 A. I began working violent crimes and partially
2 organized crime.

3 Q. And approximately how long and how many years did
4 you work those kinds of cases here in Toledo?

5 A. I worked -- for my first year in Toledo, I worked
6 a combination of the violent crimes and organized crime,
7 and then from that point on, I worked almost exclusively
8 organized crime.

9 Q. And for about how long did you work organized
10 crime?

11 A. It was in excess of 20 years.

12 Q. Did there come a time when your assignment, that
13 is the kinds of cases that you were asked to work on,
14 changed?

15 A. Yes.

16 Q. And can you tell the members of the jury
17 approximately when that was?

18 A. It was in late 2000, early 2001.

19 Q. And how did your assignment change?

20 A. I was assigned to work counterterrorism and
21 counterintelligence part-time in the Toledo Resident
22 Agency, in addition to my organized crime.

23 Q. Did there come a time when you helped to create
24 or form in the formative stages of the Joint Terrorism Task
25 Force here in Toledo?

1 A. Yes.

2 Q. And was that before or after 9-11, when the
3 formative stages, at least of that task force?

4 A. That was prior to September 11th, 2001.

5 Q. After September 11th, 2001, did the volume of
6 work at the JTTF increase?

7 A. Yes, it did.

8 Q. Did there come a time when you received help from
9 another agent on the JTTF, another FBI agent on the JTTF,
10 to work on many of the matters with you?

11 A. Yes.

12 Q. Who was that?

13 A. Special Agent Shannon Coats.

14 Q. Do you remember about how long you were working
15 on counterterrorism matters before Agent Coats was
16 assisting you?

17 A. It was approximately nine months, I would -- I
18 would imagine.

19 Q. Was that shortly after 9-11?

20 A. That's correct.

21 Q. 2001?

22 A. That's when he began, yes.

23 Q. I want to ask you a few questions about the
24 investigation that lead to the case against these
25 defendants. Have you recently reviewed all of the

1 recordings made by Darren Griffin before testifying here
2 today?

3 A. No.

4 Q. And have you reviewed a number of those
5 recordings yourself?

6 A. Parts, approximately four or five.

7 Q. And except for the parts or portions of the four
8 or five, when was the last time that you remember listening
9 to some or all of the recordings that Darren Griffin made?

10 A. The last time probably would have been in
11 March -- early to mid-March of 2005.

12 Q. Was that part of your work, in terms of receiving
13 those recordings, at or near the time that they were made?

14 A. That is correct.

15 Q. Can you describe for the jury your ability to
16 recall the events and circumstances of this particular
17 investigation?

18 A. It's difficult.

19 Q. Can you tell the members of the jury why that is?

20 A. In addition to my working several matters back at
21 the time that these matters before The Court were being
22 investigated, I had those several matters, plus when I
23 left, these were highly sensitive matters, and I purposely
24 was avoiding any -- a lot of thought or anything else
25 relative to the case because of their sensitivity, so I

1 wanted to just walk away and not risk inadvertently letting
2 something go that might be classified.

3 Q. And basically, when you retired, you retired; is
4 that another way of putting that?

5 A. That's correct. That's correct.

6 Q. When you retired from the FBI, did you know
7 whether criminal charges were going to be brought in this
8 case?

9 A. I did not.

10 Q. If you do recall, can you tell us approximately
11 when it was that you first learned about an individual
12 named Darren Griffin?

13 A. It was in late 2001.

14 Q. And did there come a time when Darren Griffin
15 became a cooperating witness for the FBI?

16 A. That is correct.

17 Q. Can you tell us again, approximately when that
18 took place?

19 A. The -- the suitability assessment began within a
20 few weeks or a month after we first laid -- I first met
21 Mr. Griffin.

22 Q. And how long did that process last,
23 approximately?

24 A. To which are you referring, the suitability?

25 Q. Uh-huh.

1 A. It usually takes about 30 days.

2 Q. And after that was there a time when Darren
3 Griffin was assessed by you and other agents in the FBI?

4 A. That's correct.

5 Q. Did that assessment take a period of time?

6 A. It did.

7 Q. Again, approximately how long did that assessment
8 take place, if you recall?

9 A. I don't -- I don't recall.

10 Q. Was it days, months, years?

11 A. Well, it would have been -- it would have been
12 possibly weeks or even months.

13 Q. Was the assessment of Darren Griffin ongoing
14 throughout his involvement with the FBI?

15 A. Yes.

16 Q. Did there come a time when you became one of
17 the -- or the main FBI contacts or handlers for Darren
18 Griffin?

19 A. Yes.

20 Q. And were you the first person to take that role?

21 A. That is correct.

22 Q. And again, if you can, can you give us an
23 approximate -- from what date to what date were you one of
24 the handlers for Darren Griffin?

25 A. Again, it's sometime in late 2001 until March

1 of -- sometime in March of 2005.

2 Q. And was Agent Coats also involved during this
3 period of time, being one of the contact agents or
4 handlers?

5 A. Yes, he was.

6 Q. Was there a term that was used in the FBI to
7 refer to what role he played before you retired?

8 A. At one point, he became the alternate agent of
9 record.

10 Q. And if you know, did he ultimately become the
11 primary contact or primary handler of Darren Griffin?

12 A. Yes, prior to my retirement, so there was a
13 smooth handling.

14 Q. To the best of your recollection, when Darren
15 Griffin began his work for the FBI, was Darren Griffin told
16 anything by you or any other FBI agent in your presence
17 about Mohammed Amawi, Marwan El-Hindi, or Wassim Masloun?

18 A. No.

19 Q. Was Darren Griffin paid by the FBI?

20 A. Yes.

21 Q. Can you tell the members of the jury why he was
22 paid?

23 A. Mr. Griffin was being asked to spend a lot of
24 time attempting to get information on our behalf, and the
25 demands of this made it prohibitive from him actually

1 obtaining or retaining a job, and so it's just a matter of
2 him being able to live.

3 Q. Was the money that Darren Griffin was paid ever
4 in any way linked by you or any other FBI agent in your
5 presence to the arrest or prosecution of anyone?

6 A. No.

7 Q. Was he ever promised by you or anyone in your --
8 any other FBI agent in your presence any kind of reward for
9 his work?

10 A. No.

11 Q. During the time that you were the primary contact
12 for Darren Griffin, was Darren Griffin working on other
13 investigations unrelated to this case?

14 A. Yes, prior to and contemporaneous to these cases.

15 Q. Now, can you tell the members of the jury
16 basically why it was that Darren Griffin was sent into the
17 locations that he was sent by the FBI --

18 A. As I indicated --

19 Q. -- I'm sorry, with respect to this case and
20 others?

21 A. I'm sorry, would you repeat that?

22 Q. I'm sorry, let me rephrase the question.

23 When Darren Griffin was first asked by the FBI to
24 go to certain locations on behalf of the FBI, can you tell
25 the members of the jury why it was he was sent to these

1 locations?

2 A. We had specific investigative subjects that,
3 initially, Mr. Griffin wasn't even aware of. And some of
4 them -- some of them had been associates of some of the
5 subjects that Mr. Griffin worked when he was with the Drug
6 Enforcement Administration. And we asked Mr. Griffin to go
7 and -- and that it was after the attacks of
8 September 11th -- and meet with some of the individuals at
9 certain locations. And he did and we knew that certain
10 subjects were going to be in certain locations at a given
11 time. And Mr. Griffin went and he met with them, and he
12 reported back to us. But again, we did not specifically
13 identify them at that time.

14 Q. And were any of those subjects Marwan El-Hindi,
15 Mohammed Amawi, or Wassim Masloun at the beginning of the
16 investigation?

17 A. No.

18 Q. I want to ask you about a number of pieces of
19 property. Specifically, I want to direct your attention to
20 approximately November 24th of 2004. Do you recall
21 receiving something from Darren Griffin on or about that
22 date?

23 A. Yes.

24 MR. SOFER: And if we can put up Government
25 Exhibit Number 27. I believe it's on the computer.

1 BY MR. SOFER:

2 Q. Do you recognize what's depicted there in
3 Government Exhibit Number 27?

4 A. Yes. It is a compact disc case, and it has my
5 initials, and the date by would have been the date I
6 received it.

7 MR. SOFER: And can we go to the second page of
8 that exhibit.

9 BY MR. SOFER:

10 Q. Can you tell the members of the jury what that
11 is --

12 A. Yes.

13 Q. -- if you know?

14 A. Yes, that is a compact disc with my initials and
15 the date I received it.

16 Q. And is that the compact disc that was given to
17 you by Darren Griffin on November 24th, 2004?

18 A. Yes, it was -- or it is.

19 Q. How do you know that?

20 A. Again, because it has my initials on it, and it
21 has the date on it, and it has a case file, and it has a
22 particular identifying number.

23 MR. SOFER: At this time the government offers
24 Government Exhibit Number 27 into evidence.

25 THE COURT: It will be admitted.

1 BY MR. SOFER:

2 Q. What did you do with Government's Exhibit Number
3 27 now in evidence?

4 A. I submitted it to our evidence vault in
5 Cleveland, and thereafter, had it examined by our Computer
6 Analysis and Response Team personnel.

7 Q. Okay. And that team is also known as the CART
8 team, for the acronym of also known as Computer Analysis
9 Response Team?

10 A. That's correct.

11 Q. And I want to direct your attention to
12 approximately February 7th of 2005.

13 MR. SOFER: And if we can put up Exhibit Number
14 59?

15 BY MR. SOFER:

16 Q. On or about February 7th, 2005, did Darren
17 Griffin bring additional items to you and the FBI?

18 A. Yes, he did.

19 Q. Can you tell the members of the jury what those
20 items wants were?

21 A. The best of my recollection, he brought two
22 compact discs.

23 Q. And can you tell the members of the jury what it
24 is that you did with those two compact discs?

25 A. Mr. Griffin indicated that there may be a

1 necessity to have the discs returned, so unlike the
2 previous disc, I received the disc from Mr. Griffin and
3 then had the CART agent in our Toledo office make a -- make
4 copies so that I could return the originals to Mr. Griffin
5 in case he had to return them.

6 Q. Return them to who, do you remember?

7 A. Yes, I believe it was Mr. Amawi.

8 Q. And do you recall the name of the individuals
9 from the CART team that you gave these discs to?

10 A. Yes, Special Agent David Barns.

11 Q. I want to direct your attention to approximately
12 February 9th, 2005.

13 MR. SOFER: And here if we can put up Exhibit
14 Number 61 in evidence.

15 BY MR. SOFER:

16 Q. Did you receive something on or about
17 February 9th, 2005 from Darren Griffin?

18 A. Yes, I did.

19 Q. And can you tell the members of the jury what
20 that was? Well, if we can skip ahead and say -- I'll ask
21 you whether Exhibit 61 was one of the things you received
22 on that day?

23 A. Yes.

24 Q. Do you recall how many pages were given to you on
25 that day?

1 A. To the best of my recollection, two.

2 Q. And is this the first page of what was given to
3 you by Darren Griffin on February 9th?

4 A. Yes, I believe it is.

5 MR. SOFER: And if we can look at the second
6 page, which we can never see very well on these screens.
7 That's a little better.

8 BY MR. SOFER:

9 Q. Does that appear to be the second page of the
10 document that Darren Griffin gave to you on or about
11 February 9th, 2005?

12 A. It could be because I'm 61, but I'm having
13 difficulty seeing here.

14 Q. I understand. I'm a little younger and I have
15 the same difficulties. We can show it to you on the screen
16 or we might actually have a better copy, unless counsel
17 objects.

18 MR. SOFER: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21
22 BY MR. SOFER:

23 Q. I'll show you the second page on a piece of
24 paper. Does that appear to be the second page?

25 A. Yes.

1 Q. Of the two-page document that was given to you on
2 or about February 9th?

3 A. Yes.

4 Q. Now, do you recall what you did with Government
5 Exhibit Number 61?

6 A. Yes. I -- I brought the items back to our office
7 and prepared an FD-302.

8 Q. An FD-302 is a name of a form?

9 A. That's correct. It's a record of investigation
10 or interview.

11 Q. And what did you do with Exhibit Number 61 with
12 respect to the 302?

13 A. I placed -- I placed copies of that exhibit on
14 the FD-302.

15 Q. And how did you do that?

16 A. I had it copied or scanned onto the paper and
17 made it in a -- as an addendum.

18 Q. Do you know what happened -- I'm sorry. Did I
19 interrupt you?

20 A. No, that's fine.

21 Q. What happened to the original, if you know?

22 A. I don't recall.

23 MR. SOFER: At this time, Your Honor, the
24 government offers 61 into evidence?

25 MR. BOSS: Your Honor, may we approach?

1 THE COURT: Sure.

2 (A sidebar conference was had on the
3 record.)

4 THE COURT: Objection?

5 MR. BOSS: Yes, Your Honor. This is a document
6 that earlier we had about the objection to the
7 admissibility of the document. The Court reserved judgment
8 on it pending the examination of this witness. We'd ask
9 The Court to continue reserving that determination until
10 after he's been cross-examined on the whereabouts of the
11 original and what happened to it and so forth.

12 MR. SOFER: I see no need for that, Judge. The
13 rules are clear. A copy -- I mean an original is not
14 present.

15 THE COURT: I don't know what you can -- you can
16 ask him. I think a foundation's been laid. He got it.
17 That's what he got. He doesn't know where the original is.
18 He made a copy of it.

19 MR. SOFER: If they want to argue weight, but I
20 think it's clearly admissible, Judge.

21 THE COURT: Why don't you move the admission
22 later? I mean, I can't see.

23 MR. SOFER: I'll move it and await The Court.

24 THE COURT: I'll reserve ruling and renew it.

25 MR. SOFER: Okay. If I remember.

1 (Sidebar concluded.)

2 BY MR. SOFER:

3 Q. I want to direct your attention on or about
4 February 17th of 2005 and ask you if you recall receiving
5 anything from Darren Griffin on that day?

6 A. Yes, I do.

7 MR. SOFER: If we can put up Exhibit Number 62.
8 I believe it's already in evidence.

9 BY MR. SOFER:

10 Q. And ask you, does what's depicted in Exhibit
11 Number 62 fairly and accurately represent the first page of
12 what was given to you by Darren Griffin, best as you
13 recall, on or about February 17th of 2005?

14 A. Yes.

15 Q. And if you know, were there additional pages, as
16 well, given to you on that day?

17 A. I believe there were. I don't recall how many.

18 Q. Okay. Well, let's take a look at the second
19 page. Does that refresh your recollection as to whether
20 there was a second page given to you on that day?

21 A. Yes.

22 Q. Does that refresh your recollection as to whether
23 there was a third page given to you to that date?

24 A. Yes, it does.

25 Q. Again, thank you.

1 Tell the members of the jury what you did with
2 Government Exhibit Number 62, best as you recall, after you
3 received it from Darren Griffin?

4 A. Again, after meeting with Mr. Griffin, I returned
5 to the office, prepared an FD-302, and attachments were
6 made.

7 Q. So you think you attached this to a 302?

8 A. To the best of my recollection, I don't --

9 Q. Would a 302 have to be prepared every time a
10 piece of property like this would come in?

11 A. No.

12 Q. What would other -- what other kinds of things
13 might be you do with a piece of document or another piece
14 of evidence that came into the FBI through Darren Griffin?

15 A. They could be placed in evidence, either in
16 what's called a Vocke exhibit (phonetic) or a 1A exhibit.

17 Q. And do you recall which of those three things you
18 did, 302, one Vocke exhibit, or 1A, with respect to this
19 particular piece of evidence?

20 A. No, I don't.

21 Q. I want to direct your attention to February 19th
22 of 2005. And ask you, did you receive something on that
23 date from Darren Griffin?

24 A. Yes, I did.

25 MR. SOFER: And if we can put up exhibit --

1 Government's Exhibit Number 73.

2 BY MR. SOFER:

3 Q. Again, I'd ask you if this refreshes your
4 recollection, is this the document -- that first page of
5 the document that you received from Darren Griffin on or
6 about February 19th of 2005?

7 A. Yes, it is.

8 Q. Do you recall, did this document have an
9 additional page or more?

10 A. I believe it did.

11 Q. Okay.

12 MR. SOFER: If we can go to the second page.

13 BY MR. SOFER:

14 Q. Government's Exhibit Number 73, is that the
15 second page of the document that was given to you?

16 A. To the best of my recollection, it is, yes.

17 Q. Again, did you secure this document using one of
18 the methods that you just described to the members of the
19 jury?

20 A. Yes, I did.

21 MR. SOFER: Your Honor, this is, I believe, in
22 evidence, but subject to connection, just for The
23 Court's -- this is the connection, just so The Court --

24 THE COURT: Any objection?

25 MR. HARTMAN: I didn't hear Mr. Sofer.

1 THE COURT: He's offering the exhibit. He's
2 reoffering the exhibit suggesting that no basis to continue
3 reserving for consideration.

4 MR. HARTMAN: I think this was already entered
5 into evidence.

6 THE COURT: Okay. It will be -- it will be.

7 BY MR. SOFER:

8 Q. I want to direct your attention to approximately
9 the same day. Did you get another item from Darren Griffin
10 on that date, best as you recall?

11 A. Yes, I did.

12 Q. Can you tell the --

13 MR. SOFER: Let's put up Government's Exhibit
14 Number 74, which is already in evidence.

15 BY MR. SOFER:

16 Q. And ask you if this is the additional document
17 that you received from Darren Griffin on February 19th,
18 2005?

19 A. Yes, it is.

20 Q. Finally, did there come a time on February 27th,
21 2005 when you received an e-mail from Darren Griffin?

22 A. That's correct.

23 Q. And can you tell the members of the jury how it
24 was that you received an e-mail from Darren Griffin, best
25 as you recall?

1 A. To the best of my recollection, Mr. Griffin sent
2 an e-mail to what would be called an "undercover" Hotmail
3 address that we received at a stand-alone computer in our
4 Toledo office of the FBI.

5 Q. Without going into too many details, can you just
6 tell the members of the jury what an "undercover" e-mail
7 address would be?

8 A. Yes. We had the undercover e-mail address, as
9 much as anything, to protect Mr. Griffin. We couldn't have
10 him sending an e-mail to an FBI e-mail address, so -- so as
11 not to raise the concerns or suspicions of anybody, we
12 asked him to send it to that address.

13 Q. And do you recall what that address is as we sit
14 here?

15 A. Yes, it's Ahmed, A-H-M-E-D, underscore,
16 1079@Hotmail.com.

17 MR. SOFER: And let's put up Government's Exhibit
18 Number 79, which is already in evidence. If we can just --
19 BY MR. SOFER:

20 Q. On the second line -- which is the third line
21 down -- on Government's Exhibit Number 79, at
22 Ahmed_1079@hotmail.com, is that the address you're
23 referring to?

24 A. Yes, it is.

25 Q. Were you aware of the Darren Griffin e-mail

1 address at that time, as well?

2 A. Yes, sir, I was.

3 Q. And were you monitoring the Ahmed -- or
4 Ahmed_1079@hotmail.com account?

5 A. Yes.

6 Q. Can you tell the members of the jury what you did
7 after -- well, before we do that, this was -- this was a
8 multipage mail?

9 A. Yes, it was.

10 Q. And if we could just go through the pages, I just
11 want you to confirm whether or not the additional pages on
12 Government's Exhibit Number 79 in evidence were, in fact,
13 received on or about February 27th, 2005.

14 MR. SOFER: And for the record, we went through
15 the additional pages.

16 BY MR. SOFER:

17 Q. I'd ask you, again, is this the e-mail that you
18 received from Darren Griffin on or about the date that I
19 mentioned?

20 A. Yes.

21 Q. Can you tell the members of the jury what you did
22 with this e-mail, best as you recall?

23 A. Best of my recollection, again, as with the
24 previous items, I obtained them from Mr. Griffin, and
25 again, put them into evidence in the case file.

1 Q. And on this particular one, do you recall copying
2 it onto a floppy disc or some other media?

3 A. Yes, we did, because we actually -- in receiving
4 it from Mr. Griffin, it was an e-mail, and so I downloaded
5 it on the old style floppy and then placed that into the
6 case file, so I did not receive it personally from Mr.
7 Griffin. I did receive it through the e-mail.

8 Q. Through the FBI's undercover?

9 A. Correct.

10 MR. SOFER: I have no further questions.

11 MR. HARTMAN: Judge, do you mind if we take a
12 short break?

13 THE COURT: That would be fine.

14 Ladies and gentlemen, why don't we take about a
15 ten-minute break or so.

16 You may step down.

17 (A brief recess was taken.)

18 THE COURT: And you remain under oath.

19 And Mr. Hartman, you may you begin.

20 MR. HARTMAN: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. HARTMAN:

23 Q. Good afternoon, sir. My name's Steve Hartman. I
24 represent Marwan El-Hindi.

25 Just so I'm clear, is it still Agent Radcliff or

1 is it former or Mr.? How do you want -- how do you want to
2 be addressed?

3 A. I'm just a used-to-be.

4 Q. Well, I'm a never-has-been, so don't worry about
5 it.

6 Would you agree with me that the best
7 interaction -- or the best evidence of the interaction
8 between Mr. Griffin and my client is what is recorded on
9 the recordings rather than what's recorded later in
10 reports?

11 A. I'd say for the most part, unless there's other
12 evidence.

13 Q. Let me ask you about physical evidence, again,
14 just because I want to make sure that it's clear. When you
15 get physical evidence in, just procedurally, what do you do
16 with it?

17 A. Normally what happens when we get any evidence,
18 we bring it in, and we place it in the case file.

19 Q. You fill out a form?

20 A. It can be -- it can be a form or it can be
21 submitted to the case file, depending on the size of the
22 piece of evidence. If it's a document, it could be placed
23 in an envelope and sent to the case file. If it's a bulky
24 item, it's placed in what they call bulky evidence; it's
25 still a part of the file.

1 Q. It's labeled somehow, correct?

2 A. Yes, it is.

3 Q. Now matter how big or small it is, everything's
4 labeled?

5 A. Yes, it is.

6 Q. And you start a chain of custody form for each
7 piece of evidence?

8 A. In the bulky -- bulky exhibits, that's correct.

9 Q. What kind of exhibits don't you use a chain of
10 custody form for?

11 A. Again, if an item is placed into the case file
12 that is not a large piece of evidence that has to go to the
13 bulky room, and it goes directly to the case file, it could
14 be placed in what is called a "1A envelope" that goes to
15 the file.

16 Q. So then the 1A envelope becomes the record of the
17 document or whatever it is going into the file?

18 A. That's correct.

19 Q. Now, for Exhibit 61 that we talked about --

20 MR. HARTMAN: Can we put that back up? Actually
21 we've seen it, we know what it is.

22 BY MR. HARTMAN:

23 Q. We talked about Exhibit 61 was a 1A envelope
24 filled out for Exhibit 61?

25 A. I don't recall.

1 Q. Did you fill one out that you're --

2 A. Sir, I'm sorry, I don't recall.

3 Q. Was a chain of custody form ever filled out for
4 Exhibit 61?

5 A. I don't recall.

6 Q. That's not normal, correct?

7 MR. SOFER: Objection.

8 THE COURT: Why don't you rephrase?

9 BY MR. HARTMAN:

10 Q. Okay. Would you agree with me that it's out of
11 the ordinary for the FBI to get an original document and
12 not be able to locate it later on in an investigation?

13 A. I'm sorry, would you repeat that?

14 Q. Would you agree with me that it's not normal for
15 the FBI not to be able to locate the original of a document
16 that's involved in an investigation?

17 A. If it's placed in the file?

18 Q. If it's given to an FBI agent?

19 A. It would be placed in the file and it would be --
20 it would be relatively unusual.

21 Q. How often would you say that happens?

22 A. I don't know.

23 Q. When you received Exhibit 61, was that document
24 fingerprinted?

25 A. Not to my knowledge.

1 Q. Is it -- is it standard policy to scan a document
2 and attach it to a 302?

3 A. It's not necessarily standard, it's the call of
4 the -- of the author of the 302.

5 Q. Okay. So in this case, it was your call?

6 A. Yes.

7 Q. What made you decide to do it?

8 A. In looking at 61, it was an item that we needed
9 to have analyzed for intelligence purposes, and the best
10 vehicle to do that would be to attach it to an FD-302.

11 Q. Rather than -- strike that.

12 Tell me about the process of getting recordings.
13 Were you the person who would receive -- early on in the
14 investigation, were you the person who would receive the
15 recording device from Mr. Griffin?

16 A. Many times, yes.

17 Q. Would you ever listen to the recording with
18 Mr. Griffin when he gave you the device?

19 A. It's -- it depends on the type of recording, but
20 usually not.

21 Q. Okay. What's the usual -- tell the jury what the
22 usual procedure is.

23 A. Again, depending on the type of recording, if it
24 was an audio recording, it was recorded on a digital
25 format, and it actually had to be downloaded from a -- a

1 recording device onto a disc, then it became evidence.

2 Q. So when would you review a recording with
3 Mr. Griffin at the time that he gave it to you? Were there
4 any instances that you remember doing so?

5 A. I don't recall it, but I can't say that it's
6 absolutely not -- not the case. I don't recall. It
7 wouldn't be on one of those types of downloads because I'd
8 have to take it back and then download it.

9 Q. Understood. You would listen to the recording
10 later?

11 A. I would.

12 Q. Did you listen to all the recordings while you
13 were -- I don't know if I know the term "lead agent" on the
14 case?

15 A. I can't say all of them, but I try to listen to
16 them. Other agents that began assisting in the matter and
17 then ultimately became the case agents, then assumed the
18 responsibility.

19 Q. When Mr. Griffin would bring you recordings, you
20 would have a debriefing as well, usually?

21 A. That's correct.

22 Q. And you would create a 302 of the meeting?

23 A. Yes.

24 Q. Now, would you make those 302s before or after
25 you listened to the recording?

1 A. Usually prior.

2 Q. So the order of things was, you'd make the 302
3 and then listen to the recording?

4 A. Not all of the time; oftentimes, yes.

5 Q. Oftentimes. Well, to the extent that you made
6 the 302s and then listened to the recordings, were there
7 times when you noticed inconsistencies in what Mr. Griffin
8 had reported and what you heard on the recording?

9 A. Not that I recall.

10 Q. It could have happened, you just don't remember
11 it?

12 A. If you have some examples, I could -- because
13 again, there are -- there are a lot of recordings and there
14 were a lot of debriefings.

15 Q. Well, do you recall filling out a 302 or
16 dictating a 302 on 1-03-2005 about November 23rd, 2004?

17 A. I -- on -- may I see the document?

18 MR. HARTMAN: Absolutely.

19 MR. SOFER: Counsel.

20 BY MR. HARTMAN:

21 Q. I'm sorry. If you can just take a look at that
22 and give it a read and let me know when you're finished.

23 A. Okay, sir.

24 Q. My first question is, that was about an
25 investigation -- the investigation date is November 23rd of

1 2004; is that correct?

2 A. That is correct.

3 Q. And yet it wasn't dictated until January 3rd of
4 2005; is that correct?

5 A. That's what is indicated.

6 Q. Is it normal to have that much time between when
7 you get the debriefing and when you dictate the 302?

8 A. No.

9 Q. Would you read the highlighted portion to
10 yourself, please.

11 A. Yes.

12 Q. Now, that says, according to your debriefing,
13 that Mr. Griffin told you that Marwan El-Hindi has been in
14 contact?

15 MR. SOFER: Objection.

16 THE COURT: I would tend to agree.

17 MR. HARTMAN: May we approach?

18 THE COURT: Yeah.

19 (Sidebar discussion was held on the record.)

20 THE COURT: I don't think -- you can't read this
21 into the record. You're testifying, not he. You're
22 testifying. If you want to ask him, did he have a
23 conversation with Mr. El-Hindi and what did he --

24 MR. HARTMAN: You mean, from Mr. Griffin.

25 THE COURT: Mr. -- Mr. Griffin. But again, it's

1 hearsay.

2 MR. HARTMAN: Well, it's not offered for the
3 truth because, in fact, it's not true. And the jury heard
4 the recording of that day.

5 THE COURT: Okay.

6 MR. HARTMAN: And there's no where in the mention
7 of that, that this video can't be --

8 MR. SOFER: Judge, I'm back to where I have been
9 all along.

10 THE COURT: This isn't coming in. This is not --
11 I mean, so where do we go from there with that?

12 MR. HARTMAN: My point is, Judge, when the agent
13 listened to the recording -- and it's very clear that what
14 Griffin says is completely different than what's in the
15 recording what -- what's the agent do about it.

16 MR. SOFER: Two things, Judge --

17 THE COURT: Well, I think you should confirm that
18 the agent recalls listening to a recording. I mean, it
19 have been, what, three-plus years since he made this note,
20 and he indicated that he listened to, what, four or five
21 recordings, so --

22 MR. HARTMAN: Okay.

23 THE COURT: If you want me to excuse the jury and
24 question the agent, and we can play the recording and ask
25 him if he recalls that, and then, say, show him this and

1 ask him does he recall noting any inconsistency between the
2 recording and what --

3 I mean, the problem is, there's no linkage
4 between his having cognizance of the recording and what
5 they told him, and when the recording occurred. He did
6 indicate fairly soon, but there's a disconnect here.
7 You've already established that there was some period of
8 time between these two.

9 MR. SOFER: But also, Judge, this goes back to a
10 number of objections the government has lodged. A witness
11 who made this statement, the person that he wants to
12 cross-examine has come and gone.

13 MR. HARTMAN: That's not true.

14 THE COURT: Well, but the point of this, before
15 you can ask him what he did about it, about this, in light
16 of the recording, we've got to establish that he recalls
17 hearing the recording. I mean, this is just --

18 MR. HARTMAN: I'm trying to avoid playing the
19 recording for him. I mean --

20 THE COURT: Well, but I don't think there's any
21 way you can. I mean, if you want me to excuse the jury and
22 well -- we can voir dire the witness and ask him, do you
23 recall having heard this recording -- whatever date it
24 was -- and please take a look at what's been marked for
25 identification as defense exhibit -- whatever it is -- do

1 you recall Griffin telling you? If he does, and then
2 agent, what, if anything, did you do having heard the
3 recording and then Agent Griffin telling you this, if
4 anything?

5 MR. SOFER: We have to also establish -- and I
6 don't know if this is can be done or not. This goes --
7 again, 302 is a report.

8 THE COURT: But the issue also is, we have a
9 recording on which El-Hindi tells Griffin he's doing
10 something, right?

11 MR. HARTMAN: Yes.

12 THE COURT: Okay. That doesn't mean there might
13 not have been some other time when El-Hindi told Griffin
14 something else. We don't know if that's the only occasion
15 that El-Hindi said something to Griffin about what he was
16 going to be doing in Egypt. Without Griffin, you can't
17 establish that --

18 MR. SOFER: Or even that the agent, because it's
19 his report, doesn't make some logical --

20 THE COURT: I'm sorry --

21 MR. SOFER: -- conclusion.

22 THE COURT: -- before we get there, okay.

23 So I'm going to sustain the objection. If you
24 want to recall the agent at some point, and/or Griffin, but
25 right now, the fact that at one point there's a recording

1 of El-Hindi telling Griffin I'm going to Egypt to do X,
2 does not preclude the possibility, at some point, El-Hindi
3 said something to Griffin about doing Y, as reflected in
4 this report.

5 MR. HARTMAN: But that's my foundations for the
6 question were that he would talk to Griffin and get the
7 information before he listened to the recording.

8 THE COURT: How does he know that Griffin may or
9 may not have ever told him that? You've got to have
10 Griffin telling the agent that -- you've got to get Griffin
11 saying either did or didn't tell the agent about Jihad
12 training. I realize if it's -- if he actually was told
13 that, likely he would have told the agent, but without
14 Griffin telling us yea or nay, I told Radcliff this or
15 that, then -- and the fact that Radcliff may have been told
16 two separate things, doesn't really matter.

17 As Mr. Sofer said, it's a report. It's something
18 that Griffin told him.

19 MR. HARTMAN: But --

20 MR. SOFER: Maybe --

21 MR. HARTMAN: -- exactly. And how about I ask
22 him, Agent Radcliff, would you include information in that
23 from anywhere but the subject? I mean, it's -- it's a
24 source provided the following information. Griffin's the
25 source. Griffin provided this information that says right

1 there --

2 MR. SOFER: Basically, what he's doing is --

3 THE COURT: I agree. I'm sustaining the
4 objection. I don't -- there's just not enough nexus and
5 until you have some time to show that there's some
6 meaningful significance to impeach this agent or otherwise
7 correct testimony is, we don't know.

8 Griffin should have been asked, Mr. Griffin, did
9 you ever tell the agent that El-Hindi said he was going to
10 do Jihad training, even more importantly, did El-Hindi ever
11 tell you he was going to Egypt to do that? And if Griffin
12 said, no, then fine. We have a predicate on which, you
13 know, the evidence showed the agent that Griffin testified
14 that he never -- El-Hindi never told him that, how would
15 this come to be in your report. That's fine. We don't
16 have any of that predicate. We really don't.

17 I'm going to sustain the objection.

18 MR. SOFER: That's exactly the government's
19 point, for the record.

20 MR. HARTMAN: Will Your Honor give me a moment
21 because I need to re --

22 THE COURT: Of course.

23 (Sidebar concluded.)

24 MR. HARTMAN: Thank you, Judge.

25 THE COURT: Ladies and gentlemen, I sustained the

1 objection. Disregard the last bit of -- last statement by
2 Mr. Hartman.

3 You may continue.

4 BY MR. HARTMAN:

5 Q. Mr. Radcliff, when you would listen to the
6 recordings, would you make notes of your own?

7 A. On some occasions, yes.

8 Q. Would those become part of the case file or not,
9 if you know?

10 A. No, not necessarily.

11 Q. Sometimes?

12 A. As a possibility, again, they may be in 1A
13 section.

14 Q. You mentioned earlier that you listened to parts
15 of four or five recordings in preparation for your
16 testimony here today?

17 A. Yes, sir.

18 Q. Do you remember which ones?

19 A. Not specifically. I -- I don't recall the 1Ds
20 and necessarily the specific dates.

21 Q. Were they -- did you pick out which ones you
22 listened to?

23 A. I did not.

24 Q. At the time that you were the lead agent on this
25 investigation, how many other investigations were you

1 working on? And I don't want to know the details about any
2 others, just so we're clear.

3 A. Several.

4 Q. Would it be fair to say you had a lot going on
5 while this investigation was going on?

6 A. Yes.

7 Q. What percentage of your time would you say was
8 spent on this investigation?

9 A. Which -- which investigation do you mean?

10 Q. The one that resulted in this case.

11 A. Okay. Because actually, there were at least
12 three different investigations involved in this case.

13 Q. Do you mean because of the number --

14 MR. HARTMAN: Judge, can I have a minute?

15 THE COURT: Sure.

16 BY MR. HARTMAN:

17 Q. You said on direct examination that you continued
18 your assessment of Darren Griffin's performance, your
19 assessment was ongoing throughout the investigation; is
20 that right?

21 A. That's correct.

22 Q. Did you ever find -- did you ever, in your
23 assessment of what he was doing, become concerned about the
24 things he was doing?

25 A. During the course of the investigation when he

1 was doing the investigation, there was -- there was -- in
2 the tapes and the recordings that we had and the physical
3 surveillances, everything was going fine.

4 Q. And just so I'm clear, you retired April 1st of
5 2005?

6 A. Yes, sir.

7 Q. And at that point no decision about whether or
8 not charges were going to be filed in this case; is that
9 correct?

10 A. None at all.

11 Q. You talked to Mr. Griffin regularly on the
12 telephone as well, did you not?

13 A. I did.

14 MR. HARTMAN: Judge, I'd like to, at this point,
15 play a conversation that was recorded between Agent
16 Radcliff and Mr. Griffin?

17 THE COURT: Okay. Why don't you let him know
18 what it is?

19 MR. SOFER: I know what it is, but I'd like to
20 lay a foundation for doing so with the questions.

21 MR. HARTMAN: Okay.

22 BY MR. HARTMAN:

23 Q. When you would talk to Mr. Griffin on the phone,
24 you talked about the case, obviously, right?

25 A. Some aspect, yes. Or if there was a personal

1 problem he had, I would talk to him about those. There
2 could be any number of reasons for talking to him.

3 Q. Would you agree with me -- well, there's been
4 testimony in his case that his job was to go out and gather
5 information; is that correct?

6 A. That's correct.

7 Q. And is it your assessment that that's what he was
8 doing the entire time of this investigation?

9 A. When he was working for us, yes.

10 Q. Do you remember having a phone call with Mr.
11 Griffin on or about March 9th of 2005 after he had taken
12 some people shooting at Cleland's?

13 A. Not specifically, but if you have a recording or
14 if you have the record.

15 Q. I happen to have a recording we can play for you.
16 One moment, please.

17 MR. SOFER: Judge, again, if we can approach, I
18 just don't think this is a proper manner of doing this.

19 THE COURT: Come on up.

20 (A sidebar conference was had on the
21 record.)

22 THE COURT: This is the one in the car where he
23 was talking to Radcliff.

24 MR. HARTMAN: Yes, it was a video and Griffin
25 called Radcliff.

1 THE COURT: What are we doing?

2 MR. HARTMAN: What we're doing is, he just said
3 that his sense Griffin was his doing the job the entire
4 time and his job was to gather information. Mr. Griffin
5 tells him during the conversation that Mr. Amawi was very
6 upset with El-Hindi, but Griffin says, but don't worry
7 about it, I'll do the greater good thing. I'll get it
8 smoothed over and we'll get them together to train.

9 THE COURT: Okay. And I think that this video
10 does go to the question of whether he was, quote, gathering
11 information.

12 MR. HARTMAN: And that's the question I'm going
13 to, so afterwards --

14 THE COURT: You want to play the recording and
15 how audible is it?

16 MR. HARTMAN: It's very audible.

17 THE COURT: Okay.

18 MR. SOFER: And Judge, again, I think that the
19 appropriate way of doing this is to ask a question, ask the
20 witness whether he -- if he denies that, then play the
21 tape.

22 THE COURT: Why don't you -- do you recall a
23 conversation in which Griffin said A and Griffin said the
24 following, do you recall that conversation?

25 MR. SOFER: And if he does -- he doesn't recall,

1 playing it would help his recollection.

2 MR. HARTMAN: He just asked --

3 THE COURT: There was an -- do you recall
4 speaking with Griffin on day X? No, I don't. Is there a
5 transcript or whatever that we can show to him.

6 MR. HARTMAN: Yeah, we have a transcript to play
7 with the --

8 THE COURT: And just so -- say, do you recall on
9 that occasion Griffin told you X? And let it go, fine.
10 Then you can argue the point. You can ask him, isn't it --
11 however you want to handle it, fine, but I'll let you get
12 the conversation.

13 (Sidebar concluded.)

14 BY MR. HARTMAN:

15 Q. Mr. Radcliff, this was a day, I think I said,
16 that Mr. Griffin took some people to Cleland's and dropped
17 them off. Do you recall a phone conversation with him in
18 which he was telling you that Mr. Amawi was upset with
19 Mr. El-Hindi?

20 MR. SOFER: Objection, Your Honor, as to the
21 first part of the statement by Mr. Hartman was, A, I don't
22 believe there's any evidence of; and, B, I believe is a
23 mischaracterization of the day.

24 THE COURT: Why don't you ask him if he recalls
25 the conversation between himself and Mr. Griffin on that

1 day when they were returning -- going to and from
2 Cleland's.

3 MR. HARTMAN: I will rephrase.

4 BY MR. HARTMAN:

5 Q. Do you recall a conversation, on or about that
6 day, on the telephone between you and Mr. Griffin in which
7 Mr. Griffin was telling you that Mr. Amawi was upset with
8 Mr. El-Hindi?

9 A. I do not.

10 THE COURT: I'm sorry, I didn't hear your answer.

11 A. I do not. I don't recall this specifically.

12 BY MR. HARTMAN:

13 Q. Okay. Do you ever recall Mr. Griffin saying that
14 he would take care of the problems between the defendants
15 and smooth things over?

16 A. I don't recall that specifically, no.

17 Q. If I have a recording of the conversation, would
18 that help refresh your recollection?

19 A. It's possible.

20 MR. HARTMAN: Okay.

21 (Audio playing.)

22 JUROR: There's no video?

23 THE COURT: There is no video on the --

24 JUROR: No video.

25 JUROR: Now we have it.

1 THE COURT: Why don't you -- can you restart it,
2 please?

3 MR. HARTMAN: Sorry about that folks.

4 (Audio playing.)

5 MR. SOFER: Your Honor, I object as to the
6 relevance of playing this whole thing. It's unrelated to
7 this --

8 THE COURT: I believe --

9 MR. SOFER: -- the question.

10 THE COURT: -- I believe the portion that you
11 wanted to call to his attention -- how much further do you
12 need of this conversation?

13 MR. HARTMAN: I will have to check, Judge, it
14 will take me a minute.

15 THE COURT: I agree. I understood there was a
16 portion that you wanted to call to the jury's attention.

17 MR. HARTMAN: All right. Judge, we have the
18 portion.

19 THE COURT: Can you move forward?

20 MR. HARTMAN: Yes. We're ready to play it right
21 now.

22 THE COURT: This is part of the same
23 conversation?

24 MR. HARTMAN: Yes, this is later in the same
25 conversation.

1 MR. BOSS: For the record, the recording is being
2 started at 56 minutes, 49 seconds.

3 (Audio playing.)

4 MR. HARTMAN: Okay. You can stop.

5 And just for the record, we stopped at 56 minutes
6 and 36 seconds.

7 BY MR. HARTMAN:

8 Q. Mr. Radcliff, do you remember that conversation
9 now?

10 A. I do.

11 Q. Do you believe that Mr. Griffin saying that he
12 was going to do the greater good thing and smooth it all
13 over so he could get them together to train, do you believe
14 that was just gathering information?

15 A. I'm sorry, I don't understand your question. Can
16 you be more specific?

17 Q. Well, yes. Mr. Griffin was talking to you?

18 A. Yes.

19 Q. About stress between Mr. Amawi and Mr. El-Hindi?

20 A. Yes.

21 Q. We heard the conversation, because Mr. Amawi was
22 upset with Mr. El-Hindi because he didn't reconcile with
23 his wife?

24 A. Yes.

25 Q. And Mr. Griffin said, Don't worry, I'll do the

1 greater good thing and smooth it over, so it's no big deal,
2 we'll get them together to train. In your mind, is that
3 just gathering information?

4 A. Is -- get them together to train and -- I'm
5 sorry, I missed -- I didn't hear that.

6 Q. Taking action to resolve conflict between these
7 two men so he can get them together to train, is that just
8 gathering information?

9 A. Again, I'll have to go back. I do not recall
10 hearing that in the conversation, to get them together to
11 train.

12 Q. Yes. It's still on the screen --

13 A. I'm sorry.

14 Q. -- if you want to read it. Oops?

15 A. Okay. Yes. I see what you're talking about now.
16 I'm sorry.

17 Q. So it says he'll smooth that over so we'll get
18 them together and train so it's no big deal. Do you think
19 that is just gathering information?

20 A. Yes, in a way.

21 MR. HARTMAN: No further questions. Subject to
22 recall during our case in chief, Judge.

23 THE COURT: Okay. Mr. Bryan?

24 CROSS EXAMINATION

25 BY MR. BRYAN:

1 Q. Good afternoon, Agent Radcliff.

2 A. Good afternoon.

3 Q. My name's Edward Bryan. I'm one of the attorneys
4 representing Mohammed Amawi, and I have some questions for
5 you as well.

6 A. Yes, sir.

7 Q. Sir, you began putting together this
8 counterterrorism task force in the Toledo office actually
9 prior to 9-11; is that true?

10 A. That's correct, sir.

11 Q. And not long after you began the process of
12 putting that together, 9-11 occurred, correct?

13 A. That is correct.

14 Q. Is it safe for me to say, then, that sort of a --
15 it was sort of a new emphasis put on getting this task
16 force together and getting it up and running at that point
17 in time?

18 A. We had more folks that were listening to us about
19 putting it together, yes, sir.

20 Q. Okay. And that was something that was important
21 to you as an agent at that time, correct?

22 A. Of course.

23 Q. And you had some experience in the past, back in
24 the '70s, actually, doing, not counterterrorism, but
25 counterintelligence-type work; is that correct?

1 A. That's correct.

2 Q. And after a long period of time of doing more --
3 I don't want to say rudimentary, but doing more commonplace
4 FBI investigations, this was bringing you back to something
5 that was similar to what you did in your earlier '70s,
6 correct?

7 A. I wouldn't call racketeering cases rudimentary;
8 they're complex.

9 Q. I would agree with that, and I didn't mean to
10 belittle that work. It's very important work, but going
11 back and comparing it to what you were doing in the early
12 '70s with counterterrorism -- or excuse me
13 counterintelligence -- just to clarify, was that like spies
14 and all that kind of stuff?

15 A. We were, in essence, counterintelligence or
16 counter spies.

17 Q. Okay. And that was during the Cold War, correct?

18 A. That was correct.

19 Q. And your concern, your target, or your foe at
20 that time was the FBI -- or excuse me, was the -- was the
21 Soviet Union?

22 MR. SOFER: Objection as to relevance, Judge.

23 THE COURT: I would agree.

24 MR. BRYAN: He brought it up in direct.

25 MR. SOFER: Not to which service or which

1 country, Your Honor.

2 THE COURT: I would agree.

3 BY MR. BRYAN:

4 Q. And now your -- is it safe for me to say that
5 this video work was not only investigative, and that you
6 were trying to develop cases, but it was also preventative
7 as well?

8 A. To which you're referring, the previous work in
9 Washington field?

10 Q. The previous work, the counterintelligence work
11 that you were doing?

12 A. That's correct.

13 Q. Okay. And in essence, what you were trying to
14 prevent was some sort of breach of national security,
15 correct?

16 A. That's correct.

17 Q. And then in the meantime, since the earlier '70s,
18 you were involved in very important work dealing with
19 racketeering and things of that nature, correct?

20 A. That's correct.

21 Q. And those, too, also affect security at different
22 levels, correct?

23 A. Depends on what you mean by security.

24 Q. But not necessarily national security, maybe
25 security on a local level, I heard something like that?

1 A. There were a variety of organized crime cases I
2 had, and I can't really pigeonhole them.

3 Q. Okay. But you had specific targets. There were
4 individuals whom you believe were violating the law, the
5 racketeering laws?

6 MR. SOFER: Objection. Relevance.

7 THE COURT: I agree. If you want to ask him how
8 that differed or didn't differ from what he resumed doing
9 following his assignment in the Joint Task Force, that's
10 fine, but --

11 MR. BRYAN: Okay. Well, let's fast forward.

12 THE COURT: The issue here is what happened
13 regarding these defendants.

14 MR. BRYAN: Understood, Your Honor.

15 BY MR. BRYAN:

16 Q. We'll fast forward, then, to the beginning of the
17 counterterrorism task force in Toledo, Ohio, okay? Now,
18 directing your attention to shortly after 9-11, that's when
19 this task force started taking shape and you were gathering
20 certain individuals from various parts of law enforcement,
21 correct?

22 A. That's correct.

23 Q. Local law enforcement?

24 A. Yes.

25 Q. Other federal agencies, correct? Including the

1 DEA?

2 A. Yes.

3 Q. Okay. And is it safe for me to say that your
4 primary responsibility after 9-11, in developing this task
5 force, this counterterrorism task force, was to prevent
6 another terrorism attack?

7 A. Yes.

8 Q. Okay. And then the secondary responsibility was
9 maybe developing whatever evidence that there may be that
10 could potentially lead to a case sometime in the future, if
11 evidence existed of that nature, correct?

12 A. In an intermediate step, not only to prevent, but
13 to disrupt any ongoing terrorist activity that's been
14 identified, and the criminal cases, the criminal aspects,
15 were secondary.

16 Q. Certainly. So to prevent and disrupt and to be
17 able to prevent and disrupt it to identify potential
18 threats, correct?

19 A. That's correct.

20 Q. And identifying these potential threats -- by
21 keeping them from taking place, correct?

22 A. That is correct.

23 Q. Now, it would have been important as parts of
24 this task force, then, if you would have identified, say,
25 an existing terrorist cell, people who were already engaged

1 in putting the plan together to -- to bring a terrorist
2 attack onto the United States?

3 A. Certainly.

4 Q. And so that would have about been a high level
5 task force in the task force to be able to infiltrate that
6 type of a group, correct?

7 A. Certainly.

8 Q. And based upon this -- this responsibility, this
9 wasn't just at the FBI level, this was at the national
10 level; is that safe to say?

11 MR. SOFER: Objection as to relevance.

12 THE COURT: I tend to agree. What -- what
13 matters is what involvement he had in this investigation
14 with these defendants.

15 BY MR. BRYAN:

16 Q. Is it safe to say that the agents at the
17 agent-level, that was sort of a front line of this
18 approach, its front line of preventing another terrorist
19 attack?

20 A. I would agree with that.

21 Q. You were the guys that were out there actually
22 working the cases on the street, correct?

23 A. That's correct.

24 Q. Okay. And then there are certain people above
25 you who also were relating to you, in one shape or another,

1 but they weren't the ones on the street working the cases,
2 correct?

3 A. That's correct.

4 Q. And they were maybe even advising you on the law
5 and things of that nature as well?

6 MR. SOFER: Objection as to relevance.

7 THE COURT: I agree.

8 MR. BRYAN: Your Honor, may we approach.

9 (A sidebar discussion was had on the
10 record.)

11 THE COURT: Again, I don't want to know about
12 general FBI process. What's the purpose of all this?
13 What's the point? Where are we going with this?

14 MR. BRYAN: We're not -- this isn't referring to
15 the FBI philosophy, we're referring to their investigations
16 and these cases and what this agent was doing since 2001.

17 THE COURT: What difference does it make? What
18 matters is what he was doing in this case.

19 MR. BRYAN: Exactly. And what he was doing in
20 this case, Your Honor, wasn't just investigating the cases,
21 but he was taking advice from people up above him to
22 determine how to investigate these cases.

23 THE COURT: If you want to ask him that,
24 that's -- I mean, if you wanted to ask him whether he had
25 any special training or instruction with regard to this

1 kind of activity, generally, following the Joint Terrorism
2 Task Force and/or following September 11, 2001, fine, but
3 this kind of general, sort of, well, what were you doing
4 then, what were you doing now --

5 MR. BRYAN: I'm sort of beyond that.

6 THE COURT: Just focus. All I'm saying is, let's
7 focus in on what -- if you want to ask him whether he
8 received any specific training or instruction with regard
9 to his activities as a member of this task force and/or
10 with regard to Mr. Griffin and/or with regard to these
11 specific defendants, I think that's fine, a bit.

12 Although, I'm not real sure how it's connected
13 with anything, but let's at least connect it to this case.

14 MR. BRYAN: Okay, I know, Your Honor.

15 (Sidebar conference was concluded.)

16 BY MR. BRYAN:

17 Q. You, as part of your efforts in this case, in
18 this specific investigation, the sort of general
19 investigation as it related to how to approach gathering
20 information, as it relates to potential terrorism threat,
21 and more specifically, as it may have related to your
22 interactions in how you conducted your investigations on
23 the streets, as it may have related to these three
24 defendants, isn't it true that you received some legal
25 instruction from people higher up the chain of command, so

1 to speak?

2 A. Yes, that's correct, any -- also locally.

3 Q. And also locally. And some of that legal
4 instruction maybe warned you of how not to conduct the
5 investigation so as to avoid potential legal problems in
6 the future?

7 A. That's correct.

8 Q. And also may have instructed you on, say, the law
9 of conspiracy, what's necessary for the law of conspiracy?

10 A. There was a discussion of conspiracy, that's
11 correct.

12 Q. Okay. And you were told that one of the most
13 basic elements of the law of conspiracy is that it's a
14 criminal agreement involving two or more individuals,
15 correct?

16 MR. SOFER: Object to the relevance.

17 THE COURT: Again, I agree. You can ask him what
18 he was told.

19

20 BY MR. BRYAN:

21 Q. That one of the most basic, objective elements of
22 the conspiracy, that it involves a criminal agreement
23 between two or more individuals, correct?

24 A. We learned that in special agent school, yes.

25 Q. And you also knew it as part of your

1 investigation in this case, as well as any potential,
2 quote, criminal conspiracy that could develop during your
3 investigation in this case, correct?

4 A. Correct.

5 Q. Okay. And you knew that one of those individuals
6 could not be a law enforcement officer, someone who is
7 working on behalf of law enforcement, such as an informant,
8 right?

9 MR. SOFER: Objection. And I object to the
10 characterization of the legal concept.

11 THE COURT: I agree. I mean, in terms of -- the
12 problem is that you are discussing legal terms. And you
13 can ask him what he may have been told or what he
14 understood the law was, but not whether he was told that
15 the law was specifically this or that because that's for me
16 to tell the jury what the law is.

17 BY MR. BRYAN:

18 Q. Well, as it related -- we'll talk about more
19 about Mr. Griffin in a minute. But as it related
20 specifically to Mr. Griffin and what he was doing in the
21 community, you knew, not only from advice, but from your
22 training in the FBI academy, that an agreement between
23 Mr. Griffin and somebody else would not be sufficient to
24 establish a criminal conspiracy, correct?

25 A. That's correct.

1 Q. Okay. So you needed, in addition to Mr. Griffin,
2 you needed one of the defendants, as well as at least one
3 other defendant to agree with the goal of the conspiracy?

4 MR. SOFER: Objection, Your Honor.

5 THE COURT: I agree. It's not whether he knew
6 what the law is. You can ask him if he understood the law
7 is.

8 But I want the jury to understand, I will tell
9 you what the law is and whatever Mr. Radcliff or anybody
10 else may have been told about the law, whatever lawyer
11 suggests to you the law might be, cannot be considered by
12 you.

13 BY MR. BRYAN:

14 Q. Again, your primary responsibility in this area
15 is to prevent -- to gather information so as to prevent
16 another terrorist attack?

17 A. Prevent and deconstruct.

18 Q. And secondary to that is to maybe -- to
19 investigate any cases that may have grew out of that
20 investigation, correct?

21 A. Yes.

22 Q. Now, in your investigation, you were given
23 certain tools to be able to conduct your investigation,
24 correct?

25 A. This -- which specific investigation?

1 Q. The investigation that led to the charges in this
2 case?

3 A. Yes.

4 Q. And some of those tools were the ability to
5 listen to conversations between and among the defendants,
6 correct?

7 MR. SOFER: Objection.

8 THE COURT: I'll let him answer that.

9 A. I can comment, in part.

10 BY MR. BRYAN:

11 Q. Okay. Let's just clarify. I mean, just related
12 to their interactions with Mr. Griffin, right?

13 MR. SOFER: Again, objection.

14 THE COURT: I agree. Why don't you rephrase the
15 question?

16 BY MR. BRYAN:

17 Q. Well, the primary purpose has already been stated
18 in this case for the investigation was to gather
19 information, correct?

20 A. Yes.

21 Q. And you were going to utilize certain tools to be
22 able to gather information to either to prevent or disrupt
23 a potential activity against the United States, correct?

24 A. Yes.

25 Q. And also to -- to investigate any cases or crimes

1 that you believe may have arose out of that investigation,
2 correct?

3 A. Yes.

4 Q. And as part of this effort, you develop numerous
5 sources of information? I'm not asking you to identify
6 what those sources are.

7 A. Yes.

8 Q. But just numerous sources. Some of these sources
9 could have been concerned citizens who just voluntarily
10 called the FBI and gave information?

11 MR. SOFER: Objection to what sources could have
12 been, Your Honor.

13 THE COURT: I agree. You can rephrase it.

14 BY MR. BRYAN:

15 Q. Okay. Some sources are concerned citizens?

16 A. I can't comment on my sources, sir.

17 Q. Okay. Some of the sources -- and again, I don't
18 want you to comment on who they were or identify anybody --
19 but some of the sources could also come from within the
20 community that you're investigating?

21 MR. SOFER: Objection as to relevance.

22 THE COURT: I would agree. I think you can ask
23 him about participants in this investigation and in this
24 case.

25 BY MR. BRYAN:

1 Q. Well, as it relates to this, just general
2 investigation, is it safe for me to say that at the
3 beginning of this investigation, you were the agent in
4 charge of it?

5 A. I was the agent in charge.

6 Q. You were the --

7 A. You mean, the big office or -- I don't
8 understand.

9 Q. The investigation that led to the charges in this
10 case -- and I understand that it was a broad investigation
11 than just the charges that led to this case -- but on the
12 terrorism task force, isn't it true, Agent Radcliff, that
13 you were the person who was in charge of that task force?

14 A. I was coordinating it.

15 Q. Okay.

16 A. I was not the supervisor.

17 Q. Okay. But you were the coordinator of that task
18 force, correct?

19 A. That's correct.

20 Q. So you would have been, what, the second in
21 command of the local task force, underneath the supervisor?

22 MR. SOFER: Again, objection as to relevance,
23 Judge.

24 THE COURT: I agree. You can ask him what he did
25 in this case.

1 BY MR. BRYAN:

2 Q. Well, as the coordinator of this task force, you
3 developed at least one proactive source, and that was
4 Darren Griffin, correct?

5 A. That is correct.

6 Q. Okay. Darren Griffin was brought to your
7 attention by a DEA agent on your counterterrorism task
8 force, correct?

9 A. That is correct.

10 Q. He had been working for the DEA, making
11 undercover, drug controlled buys from targeted drug
12 dealers, correct?

13 A. I don't know all of the specifics, but I assume
14 that's the case, yes.

15 Q. Okay. I believe you used the term referring to a
16 period of time where you were sort vetting Darren Griffin
17 and what was the term that you used, sir?

18 A. I don't recall.

19 Q. Suitability assessment, I believe is what you
20 said?

21 A. Yes.

22 Q. Okay. And that began, initially, when it was
23 first brought to your attention that Mr. Griffin could
24 potentially assist you in an undercover capacity, correct?

25 A. Yes.

1 Q. And as it related to this suitability assessment,
2 you interviewed Darren Griffin himself, correct?

3 A. That's correct.

4 Q. Maybe asked his handler from the DEA about him
5 and how he worked out in the DEA?

6 A. Yes.

7 Q. Did you polygraph Darren Griffin?

8 THE COURT: I'm sorry, I didn't hear your
9 question.

10 BY MR. BRYAN:

11 Q. Polygraph Darren Griffin?

12 A. Yes, we did.

13 Q. Did you drug test Darren Griffin?

14 A. We did not.

15 Q. Were you aware during this suitability assessment
16 that Darren Griffin had used drugs while he was working for
17 the DEA as a DEA informant, were you aware at that time?

18 A. No, sir.

19 Q. Were you aware during this suitability assessment
20 that Darren Griffin, himself, had actually engaged in
21 trafficking in narcotics during the period of time that he
22 was working as a DEA informant?

23 A. No, I'm not aware of that.

24 Q. Is it safe for me to say that that's something
25 that would affected your suitability assessment if you knew

1 that at that time?

2 MR. SOFER: Objection. Speculation.

3 THE COURT: I would agree. It matters what was
4 done with speculation not what might have been done.

5 BY MR. BRYAN:

6 Q. After this suitability assessment, is it -- is it
7 fair for me to say that you then set out with all the other
8 agents, the other people on the task force, and Darren
9 Griffin, himself, to create a plan how to best utilize him
10 in this investigation process?

11 A. That's correct.

12 Q. Okay. And as part of this plan, you were going
13 to -- Darren Griffin, you knew, was going to, in essence,
14 become the eyes and ears of the FBI when the FBI couldn't
15 see for themselves what was going on?

16 A. He was to gather information, correct.

17 Q. Okay. And he was going to use certain tools to
18 gather that information, including audio recording devices?

19 A. Yes.

20 Q. And video recording devices as well?

21 A. Yes, sir.

22 Q. And you knew as part of his cover that he just
23 couldn't just walk into -- strike that.

24 How was it determined what community that Darren
25 Griffin was going to, in essence, enter into?

1 A. As I indicated previously, there were ongoing
2 investigations prior to 9-11, subsequent to 9-11, and prior
3 to Mr. Griffin working with us, and there were certain
4 individuals that we were interested in, so we directed him
5 to where they were going to be.

6 Q. Okay. Of these individuals that you were
7 interested in, I believe you already said they were not
8 Mohammed Amawi, Marwan El-Hindi, or Wassim Masloun,
9 correct?

10 A. That's correct.

11 Q. But again, not asking you specifically why you
12 were interested in these individuals, is it safe for me to
13 say that these individuals were members of the Muslim
14 community?

15 A. I can't comment on that.

16 Q. You can't comment or --

17 A. I can't comment.

18 Q. Okay. Is it safe for me to say that the -- some
19 of the targets were from the Muslim community in Toledo,
20 Ohio?

21 A. I can't comment on that.

22 Q. All right. Well, some of the places that
23 Mr. Griffin went into were mosques, correct?

24 A. Yes.

25 Q. Okay. Did he go into any Catholic churches?

1 A. No, he did not.

2 Q. Did he go into any Baptist churches?

3 A. He did not.

4 Q. Did he go into any Methodist churches?

5 A. He did not.

6 Q. Did he go into any Jewish synagogues?

7 A. He did not.

8 Q. Mr. Griffin went into mosques, correct?

9 A. He did.

10 Q. And did the individuals that he was making
11 relationships with or becoming familiar with were people
12 who went to these places, correct?

13 A. Some could have, yes.

14 Q. Okay. Or were involved in other Muslim
15 organizations, correct?

16 A. I can't comment on that.

17 MR. SOFER: Object as to relevance here, Judge.

18 THE COURT: I'll let the answer stand and the
19 question.

20 BY MR. BRYAN:

21 Q. As part of Mr. Griffin's cover story, he was --
22 this was a cover that he was going to take several months
23 to develop, correct?

24 A. Yes.

25 Q. Okay. And the beginning part of his cover story

1 was that he was going to represent himself as a former
2 soldier who recently converted to Islam, correct?

3 A. That's correct.

4 Q. Okay. And so he then went into these places and
5 would tell his, in essence, his conversion story to people
6 who seem interested in listening about his conversion
7 story, correct?

8 A. He had discussions with specific individuals
9 about it.

10 Q. Okay. And of those specific individuals, were
11 people that were already people of interest to the FBI?

12 A. That's correct.

13 Q. But is it safe to say that at some period of time
14 that Mr. Griffin, then, was permitted to develop contact
15 information from people who were not part of that initial
16 investigation, correct?

17 A. Well, there were individuals who were associates
18 that did come into contact with Mr. Griffin, that's
19 correct.

20 Q. Okay. And gradually, over time, Mr. Griffin,
21 then, was supposed to sort of transform his recent
22 conversion into somebody who was critical of the United
23 States foreign policy and that he was developing into
24 people who they observed from the outside, and they had
25 concerns that he may have had some extremist viewpoints?

1 A. Actually, at the outset, he was training himself
2 as a disaffected, former U.S. soldier.

3 Q. So then it wasn't for a period of over months
4 that he gradually developed into that role then?

5 A. The disaffected U.S. soldier, that's how we had
6 him portray himself.

7 Q. Okay. Now -- and then he was going to the mosque
8 and sharing this viewpoint or these viewpoints with others?

9 A. He was going several places. And I liken it to
10 my old Mafia cases, when informants and undercover agents
11 would go a lot of different places, including churches for
12 christenings and going to weddings and the like, and they
13 go in different locations as well.

14 Q. Now, were you aware as also -- I mean, Darren
15 Griffin was driving a vehicle at this time, correct?

16 A. Yes.

17 Q. And he was driving a newer model Honda Accord?

18 A. I don't recall what he was driving.

19 Q. And do you recall that he also was -- was set up
20 in a downtown apartment?

21 A. Yes.

22 Q. Okay. And that downtown apartment, is it safe to
23 say that it's a nicer place to live in downtown and not --

24 MR. SOFER: I'll object to this whole line of
25 questioning and what the relevance is.

1 THE COURT: I agree. Sustained.

2 BY MR. BRYAN:

3 Q. As part of his cover, Mr. Griffin also had to
4 have some kind of employment as well, correct?

5 A. Yes.

6 MR. SOFER: Same objection, Your Honor. May we
7 approach?

8 (A sidebar conference was had on the
9 record.)

10 MR. SOFER: It seems like we've been down this
11 road. I don't understand where we're going. It seems
12 irrelevant to me, and I object to the general line of
13 questioning, unless it's headed to some point that has to
14 do with the cross, again, the cross-examination. As much
15 as counsel would like to use these agents to cross-examine
16 or rehash the testimony of Darren Griffin, I just don't
17 think they can do this through the cross-examination of
18 this witness.

19 THE COURT: Where are you going and when are we
20 going to get there?

21 MR. BRYAN: Your Honor, first of all, this agent
22 was the person who was --

23 THE COURT: I understand.

24 MR. BRYAN: -- responsible for Darren Griffin and
25 the part of the investigation. Where I'm going with this

1 is that Darren Griffin represented that he owned a security
2 company. I want to ask the agent if he was aware of that
3 representation.

4 THE COURT: Then let's ask specific questions,
5 the fact that he lived in the nicer area of downtown Toledo
6 is no significance whatsoever.

7 MR. BRYAN: It's part of the cover, Your Honor,
8 to show that he's a successful businessman.

9 MR. SOFER: That's already come out.

10 MR. BRYAN: That he has a successful security
11 company.

12 THE COURT: Let's find out about the security
13 company representation and see what he says, I mean,
14 it's -- let's get to the specific points that are being
15 made.

16 MR. SOFER: All I will say, Judge, is, counsel
17 wants to bring out the facts that've already come out.
18 They've come out there. Griffin, Agent Coats, we can bring
19 them -- I just don't see the relevance of bringing them out
20 through every witness that comes and testifies.

21 THE COURT: Let's move along.

22 MR. BRYAN: Yes, Your Honor.

23 (Sidebar concluded.)

24 BY MR. BRYAN:

25 Q. Agent Radcliff, based upon the fact that you were

1 handling Mr. Griffin at this time, were you aware that he
2 held himself out in the community as the owner of a Direct
3 Action Security Company?

4 A. Yes.

5 Q. Okay. And that this Direct Action Security
6 Company was something that could provide VIP protection to
7 dignitaries and things of that nature, correct?

8 A. Among other things.

9 Q. Okay. And he had talked about this in the
10 community that he was going into, correct?

11 A. He began with certain individuals.

12 Q. Okay. And that he also passed out business cards
13 that had his name?

14 A. He did.

15 Q. And looked very professional and everything?

16 A. Correct.

17 Q. And he offered -- or he advised people that he
18 had the ability -- that he had multiple contracts worth
19 certain dollar amounts, correct?

20 A. I don't recall that.

21 Q. Okay. Now -- and that he offered people the
22 ability to learn private security as well?

23 MR. SOFER: Same objection.

24 THE COURT: Again, I'm not sure he can testify as
25 to what Mr. Griffin did. That's for Mr. Griffin to

1 testify.

2 And if you want, and if it's pertinent, you can
3 ask him about what any instructions he may have given or if
4 that's what he was told. But I'll sustain the objection to
5 the form of the question.

6 BY MR. BRYAN:

7 Q. Well, were you aware that Mr. Griffin was
8 representing himself in this manner?

9 A. Which manner is that, sir?

10 Q. As an owner of a private security company?

11 A. Yes.

12 Q. And that he offered security training to people
13 who were interested?

14 A. Yes.

15 Q. And that he took people to the shooting range to
16 teach them how to shoot?

17 A. That wasn't immediately, no.

18 Q. But aside from the defendants in this case,
19 Mr. Griffin did take numerous other individuals to the
20 shooting range to teach them how to shoot?

21 MR. SOFER: Objection, as to relevance with
22 regards to what Mr. Griffin did with other individuals.

23 THE COURT: I would agree.

24 MR. BRYAN: If the agent is aware --

25 THE COURT: It's also based on hearsay.

1 A. I don't recall.

2 BY MR. BRYAN:

3 Q. Did you surveille any of these, or were you aware
4 of any surveillance?

5 MR. SOFER: Objection as to relevance, Judge, as
6 to whether or not the agent surveilled other people
7 unrelated to this case.

8 THE COURT: I understand. That's fair.

9 MR. BRYAN: I'll move along, Your Honor.

10 BY MR. BRYAN:

11 Q. Let's direct our attention to my client, Mohammed
12 Amawi, okay?

13 A. Yes, sir.

14 Q. You're aware, having reviewed the evidence in
15 this case, that Mr. Amawi was first recorded by Mr. Griffin
16 on June 30th, 2004?

17 A. I don't recall that. If you can show me the
18 documentation on the recording.

19 Q. Well, it's -- it's already part of the record,
20 sir, so I -- it was just -- it was just an important
21 question to ask you. Do you recall the first time that you
22 had any -- any knowledge of Mohammed Amawi during this
23 investigation?

24 A. I can't comment on that.

25 Q. Do you recall the first time you created a 302

1 concerning Mr. Amawi?

2 A. I can't comment on that.

3 Q. Okay.

4 MR. BRYAN: Your Honor, may I approach the bench?

5 THE COURT: Sure.

6 (Sidebar conference was held on the record.)

7 MR. SOFER: Here's the problem, Judge. The way
8 that these questions are being asked, the witness is being
9 asked the first time he did this, the first time he did
10 that, and it's --

11 MR. HARTMAN: That white noise isn't on.

12 THE COURT: Amy, can you put the --

13 MR. SOFER: And clearly, the witness is
14 uncomfortable with that, and I can say, to some extent, why
15 that is. There are -- there were other sources in this
16 case, and the fact that -- to ask him a question about the
17 first time such and such happened, I think is problematic.
18 If he wants to ask him the first time he received
19 information from Darren Griffin in the case, that might not
20 be -- I don't know that he's going to recall that. How do
21 you -- how do you know?

22 THE COURT: What's this?

23 MR. SOFER: This is probably, if not certainly,
24 one of the first 302.

25 MR. BRYAN: That's the first 302 that relates to

1 Mohammed Amawi.

2 THE COURT: Well, then, if you want to ask him
3 again. What are you trying to have him testify to?

4 MR. BRYAN: Well, just as to establish that
5 Mohammed Amawi was -- was known to the agent prior to
6 June 30th, actually prior to June 25th.

7 THE COURT: Why don't you ask him whether he had
8 heard the name or was aware of a person by the name of
9 Mohammed Amawi before June 30th? And I think it's probably
10 okay for you to ask without asking disclosed sources about
11 what point in time can you recall before then that you
12 heard that name. And you know, if you want to set that
13 kind of time frame.

14 Again, I'm not sure it's pertinent, but, you
15 know, that's how I would suggest that you ask it.

16 MR. SOFER: Keep in mind that, you know, if he
17 asks a question he maybe -- I'm going to warn counsel where
18 he's going to venture into a place that is problematic for
19 all of us. If it turns out somebody else had something to
20 say about Mohammed Amawi, the government has not called as
21 a witness --

22 THE COURT: I understand that.

23 MR. BRYAN: I certainly don't want to be ambushed
24 by you questions. All I'm saying is that I know that as of
25 May 13th, 2004, this is the first 302 that I was given.

1 MR. SOFER: I understand and that's why I asked
2 to come up, Judge, because I'm actually I'm not trying to
3 help counsel.

4 MR. BRYAN: If I can just ask about the 302.

5 THE COURT: I wasn't sure what the purpose is.
6 But if you want to say, do you recall when you first
7 started making reports on Mr. Amawi or whatever? And if he
8 says, do you recognize this as, in all likelihood, the
9 first instance in which were 302.

10 MR. SOFER: That question, Your Honor, is going
11 to open the door to other potential evidence and
12 information, so instead, if we -- what I'm suggesting might
13 be a way of dealing with this so counsel is ask free to ask
14 whatever question he wants, but so long as he continues to
15 mention Darren Griffin in connection with this someone, we
16 won't run into the problem that I'm trying to prevent
17 happening. So if that works for you --

18 MR. BRYAN: So this information is from Darren
19 Griffin?

20 MR. SOFER: I believe it is because I based that
21 because it says --

22 (Sidebar concluded.)

23 THE COURT: You may continue.

24 BY MR. BRYAN:

25 Q. Sir, you've previously alluded to FBI 302,

1 correct, an FBI 302?

2 A. Specifically, what are you talking about, we've
3 been talking about --

4 Q. Just generally?

5 A. The concept, what it is?

6 Q. Yes.

7 A. Yes.

8 Q. It's a report that FBI agents make when they
9 receive information?

10 A. Yes, sir.

11 Q. And sir --

12 MR. BRYAN: Your Honor, may I approach the
13 witness?

14 THE COURT: Sure.

15 BY MR. BRYAN:

16 Q. Sir, I'm handing you what's been previously
17 marked as Defendant's Exhibit A12 for identification. Do
18 you recognize that as an FBI 302?

19 A. Yes, I do.

20 Q. Okay. And when Darren Griffin would provide you
21 with information, frequently you would -- you would reduce
22 that to an FBI 302, correct?

23 A. If you can just give me a moment.

24 Q. Take your time to read it.

25 A. I'm a little slow on my reading. Okay, sir.

1 Q. That three -- that FBI 302 is dated May 13th,
2 2004, correct, the transcription date?

3 A. The date of transcription, yes.

4 Q. And the date of investigation is May 5th, 2005?

5 A. Yes.

6 MR. SOFER: Objection to reading from the 302.

7 THE COURT: I would agree.

8 BY MR. BRYAN:

9 Q. Well, does that -- that 302 refresh your
10 recollection of receiving information from Darren Griffin
11 that day?

12 A. Not specifically, sir, because I -- you have me
13 at a disadvantage. I don't know if this is Mr. Griffin's
14 report specifically or not.

15 Q. Okay. But as it relates to the date?

16 THE COURT: The record otherwise indicated
17 Mr. Griffin and you had contact or he had reported to you
18 on that day, would you dispute that, that he was the
19 source?

20 THE WITNESS: If that is the record, that's
21 correct.

22 THE COURT: Okay.

23 BY MR. BRYAN:

24 Q. Now, the date that you took that information from
25 Mr. Griffin was May 5th of 2004, correct?

1 MR. SOFER: Objection, Your Honor. He said if
2 the record supported it.

3 THE COURT: I would agree. That's dated that
4 date.

5 BY MR. BRYAN:

6 Q. Obviously prior to June of 2004, correct?

7 A. I'm sorry.

8 Q. The date of that report is obviously prior to
9 June of 2004 -- June of 2004, correct?

10 A. Yes.

11 Q. Okay. And were you aware, based upon your
12 investigation at that time, about Mohammed Amawi's travels
13 and having just recently returned from Jordan to the United
14 States in the spring of 2004, if you can recall?

15 A. I -- I don't recall.

16 Q. Okay. Sir, as it relates to Mohammed Amawi,
17 himself, do you recall a date, June 9th, 2005 to be
18 specific, when you, along with numerous other law
19 enforcement officers, went to an apartment complex on
20 Shaftsbury in Toledo, Ohio?

21 A. I don't recall that.

22 Q. To investigate a threat on the president, do you
23 recall that?

24 A. I recall generally, but I don't recall a specific
25 date of the -- again, if you have a document.

1 Q. Okay.

2 MR. BRYAN: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. BRYAN:

5 Q. Sir, I'm handing you what's just been marked
6 Defense Exhibit A13 for identification purposes. Sir, take
7 some time to read that over to yourself.

8 A. Okay, sir.

9 Q. That's another FBI 302 form, correct?

10 A. Yes.

11 Q. That was not, itself, written by you, but it was
12 written by other agents, correct?

13 A. And the investigation was by other task force
14 members.

15 Q. Okay. After reading that FBI 302, does that help
16 resurrect a memory of you going, along with other agents,
17 to shafts Barry to conduct various interviews?

18 A. To my recollection, I don't recall going to
19 shafts Barry. Do you have anything that shows I went to --

20 Q. Well, the question is, do you -- did you go to
21 shafts Barry on June --

22 A. I've never been to shafts Barry.

23 Q. Did you ever go to Mr. Amawi's apartment and
24 participate in an interview with Mr. Amawi?

25 A. No.

1 MR. SOFER: Objection. He just said he's never
2 been to --

3 THE COURT: That's fine. The answer may stand.

4 BY MR. BRYAN:

5 Q. Okay. Now, sir, as you're monitoring this
6 investigation, between the investigation that's being
7 conducted with the services of Darren Griffin, from
8 May 30th, 2004 until June 30th, 2004, are you personally
9 aware of any -- any contacts between Darren Griffin and
10 Mohammed Amawi, to the best of your recollection?

11 A. Sir, I don't recall specifics. Again, it's been
12 a passage of time, and I'm sorry, I would -- I would like
13 to recollect.

14 Q. I understand. Sir, if you -- you were part of
15 this investigation as it related to Mr. Amawi now from
16 summer 2004 until spring of 2005, that's when you retired,
17 correct?

18 A. I would say that's fair to say.

19 Q. Okay. And you were the primary agent who was
20 responsible for Mr. Griffin, at least during a significant
21 portion of that time, correct?

22 A. For a portion of that time, yes.

23 Q. Okay. Now, are you familiar with the fall of
24 2004 and the nature of the investigation as it related to
25 Mr. Amawi at that time?

1 A. You'll have to refresh my memory, sir.

2 Q. Okay. Well, in a minute I'm going to play a tape
3 where you're actually a part of the conversation, but prior
4 to that, do you recall Mr. Amawi -- Mr. Griffin going to
5 Mr. Amawi's home where they listened to and viewed videos
6 from the Internet and that would be in October of --

7 A. Just in general concept. I -- I'm sorry. In
8 general, I do not -- I don't recall specific dates.

9 Q. Okay. So generally, you recall in the fall of
10 2004 Mr. Griffin starting to view videos with Mr. Amawi and
11 in Mr. Amawi's apartment?

12 A. Again, whether -- specifically, when it was. I
13 recall, in general, that there were viewings of videos.

14 Q. Okay. And sir, do you also recall that, during
15 that time period, Mr. Amawi struggling financially at that
16 time, based upon your memory of the investigation?

17 A. Yes.

18 Q. Okay. And do you recall during that time period
19 Mr. Amawi having had some employment with a local cab
20 service, but wasn't able to continue with that because it
21 prohibited insurance?

22 A. Yes, I do.

23 Q. Insurance coverage?

24 A. Yes, sir.

25 Q. And that was because he was under 25 and the

1 insurance rates were too high for him to be able to work
2 and make money at the same time?

3 A. Again, I don't know the specifics, but that
4 sounds familiar.

5 Q. Okay. And that, again, is like the fall of 2004,
6 correct?

7 A. I don't know.

8 Q. Okay. Do you recall Mr. Amawi, during this
9 period of time, expressing to Mr. Griffin his concern about
10 not being able to find employment?

11 A. I do recall the discussions about that. I
12 don't -- I don't --

13 Q. Do you recall that being a concern of the FBI, as
14 well, because Mr. Amawi also was having problems paying his
15 rent as well, correct?

16 A. Oh, yes, yes, I do recall that.

17 Q. And you wanted, in essence, to be able to
18 continue to monitor Mr. Amawi so that there was a decision
19 to be made, an administrative decision where you guys
20 decided to allow Mr. Griffin, with FBI funds, of course, to
21 pay Mr. Amawi's rent so that he wouldn't be evicted from
22 his apartment?

23 A. That is correct.

24 Q. Okay. And during this time period, again -- was
25 this October, November of 2004, or the fall of 2004?

1 A. I'm sorry, I don't know.

2 Q. Okay. Sir, do you recall a specific occasion --
3 now, you said that you have listened to some audiotapes --

4 A. Yes.

5 Q. -- in preparation for your testimony today, and
6 those were provided to you by the United States Attorney's
7 office?

8 A. Yes, portions of.

9 Q. Portions of some recordings, correct. Do you
10 recall listening to a recording that occurred in October --
11 on October 21st, 2004?

12 A. Again, I don't recall.

13 THE COURT: Why don't you indicate what the
14 general subject was?

15 MR. BRYAN: I will, Your Honor.

16 THE COURT: He obviously has no recollection of
17 specific dates.

18 BY MR. BRYAN:

19 Q. Just to set the scene a little bit. This was an
20 occasion, whereas I asked you before, Mr. Griffin had
21 actually gone to Mr. Amawi's home on a couple of occasions?

22 A. Yes, sir.

23 Q. And viewed these video recordings, correct?

24 A. Yeah, I do have the general recollection of that,
25 yes.

1 Q. Do you recall the time where Mr. Griffin actually
2 invited Mr. Amawi to come to his downtown apartment in
3 October of 2004?

4 A. I -- I do recall him inviting Mr. Amawi to his
5 apartment. Again, the specific dates --

6 Q. Okay. And during -- during that visit, several
7 things were discussed in the apartment that -- on that day,
8 correct?

9 A. I assume they were.

10 Q. Okay. And do you also recall during that visit
11 you being the agent who was monitoring that -- that visit
12 while it was occurring?

13 A. I don't know if I was specifically, because,
14 again, due to -- important matters going on, and there were
15 times that Special Agent Coats would receive information.
16 Without seeing specifically an item, I can't comment.

17 Q. We're not talking about the item here. We're
18 talking about -- well, even after the occasion, did you
19 have the opportunity to listen to the -- the tape and even
20 view an audiotape that took place that day?

21 A. Again, the specific on -- if I could see the tape
22 or hear the tape, I could help you out.

23 Q. Okay.

24 MR. BRYAN: Your Honor, at this time the defense
25 is prepared to play a portions of 1D4, which is the

1 videotape of -- of October 21st, 2004.

2 MR. SOFER: Your Honor, can we approach?

3 THE COURT: Sure.

4 (A sidebar conference was had on the
5 record.)

6 MR. SOFER: Again, just trying to understand what
7 the basis of playing this is.

8 THE COURT: It also seems to be quite far beyond
9 direct examination.

10 MR. SOFER: It's well beyond cross-examination.
11 What's the date again?

12 MR. BRYAN: October 21st, 2004.

13 THE COURT: Which one is this? Which video is
14 this?

15 MR. BRYAN: It was both an audio and video,
16 the -- the government's version of the transcript is some
17 85 pages, I'm obviously not going to play 85 pages. There
18 are two things that I want to play. The first thing I want
19 to play is just portions of the videotape after Mr. Amawi
20 and Mr. Griffin arrived at Mr. Griffin's apartment just to
21 show that, you know, to -- to help refresh the agent's
22 recollection.

23 THE COURT: About what?

24 MR. BRYAN: Of the meeting that took place that
25 day.

1 THE COURT: He wasn't there. Whatever he knows
2 about it --

3 MR. BRYAN: Well, I assume -- he said he viewed
4 these things after the fact.

5 THE COURT: Do we have a transcript of this?

6 MR. SOFER: I don't even have a transcript. This
7 is not something the government, I don't think --

8 MR. BRYAN: I have extra transcripts for the
9 government.

10 THE COURT: What are you doing? What's this
11 about, what's the point of this on cross-examination?

12 MR. BRYAN: Well, it's basically -- it's
13 demonstrating what was happening on that day, which
14 obviously we believe is relevant to our defense, we believe
15 that this is the best witness to introduce this evidence
16 through because he was the witness who was in control of
17 the -- of the --

18 THE COURT: But he wasn't there.

19 MR. BRYAN: -- the fall at that time.

20 THE COURT: It was something that was given to
21 him. You call Griffin or your own client or somebody else
22 that may have been there to say were you there and what
23 happened then. You can't prove this up through him. This
24 is simply something he received from somebody else.

25 MR. BRYAN: In addition to that, Your Honor, this

1 agent called Mr. Griffin while he was in the apartment.
2 Mr. Griffin left the vicinity of the living room to go deal
3 with a call from this agent, and then I want to play the --
4 that call and then the transcript immediately following it.
5 And it goes to the manner in which he was conducting the
6 investigation and how he was directing the investigation.

7 THE COURT: May I suggest asking him if he
8 recalls, to the extent he had contact with Griffin, and the
9 Griffin -- what his understanding was in the company of the
10 other people in that apartment. And let's see if he does
11 or not.

12 MR. SOFER: Am I to understand you're going to
13 roll a transcript or not roll a transcript?

14 MR. BRYAN: I'm going to roll a transcript of the
15 call and what happened immediately following the call.

16 MR. SOFER: Is that a transcript that the
17 government has played prior?

18 MR. BRYAN: No, it is not a transcript that The
19 Government has played. It's a transcript I gave you last
20 week when I thought Agent Coats was the one who --

21 MR. SOFER: Now, we listened to transcript,
22 Judge, here in the courtroom, if I recall correctly. In
23 addition to not being able to discern very much, if
24 anything, on the actual audio, that's when we -- our best
25 estimate was that it was not Agent Coats.

1 And again, if this was a document, what you would
2 do is show it to the witness, see if he recalls it. I
3 think we've asked the agent to review this. I'm not
4 actually 100 percent certain, as we stand here. I think we
5 did. My -- if, in fact, we're talking about the same
6 thing, he can't even recognize whether it's him or not,
7 much less what's being said. And so there are -- and I
8 think I -- and I think I indicated to counsel last week
9 when they tried to play this that were they to try to play
10 this tape, we would ask for an audibility hearing because
11 much of it is not audible. But maybe I'm thinking of
12 something different.

13 MR. BRYAN: No. That's the exact --

14 MR. SOFER: Okay, they gave us a transcript. We
15 went back. You may recall, I asked people to run back and
16 listen to it. In addition to many number of portions of it
17 which are either inaudible --

18 THE COURT: Why don't you move onto something
19 else and before excusing this witness completely, I'll take
20 an audibility hearing outside the hearing of the jury and
21 we'll go from there.

22 MR. BRYAN: Your Honor, as it relates to that,
23 there are certain portions that are -- there are certain
24 portions that are audible. There are certain that are
25 inaudible. There are some that will probably be in

1 dispute, and obviously, Your Honor's going to have to make
2 that call.

3 THE COURT: I want to use the next 45 minutes
4 doing something other than that.

5 MR. BRYAN: I understand that, Your Honor. All
6 I'm saying, in addition to that, there's a conversation
7 between Mr. Griffin and Mr. Amawi that, by inference,
8 because the conversation shifts from, hey, let's go to your
9 house and watch some videos, can you download some videos
10 for me. That's what the agent discussed with Mr. Griffin
11 was, get Amawi to go play some videos and download some
12 videos, so I need --

13 THE COURT: Why don't you ask the agent if he
14 recalls having given that sort of instruction to
15 Mr. Griffin. I mean, if that's the point you're trying to
16 make, let's find out from the agent, and, you know, if you
17 want to say what kinds of instructions did you give to
18 Griffin, what did you do, how did you control, and
19 ascertain he was doing what you expected and wanted him to
20 do. Let's ask him that, rather than bringing in bits and
21 pieces of random conversations particularly when, according
22 to Mr. Sofer, this agent cannot be certain that it's him on
23 the tape. And if it's not him --

24 MR. BRYAN: It's either him or Agent Coats and
25 the excuse they gave me last week for me not playing it for

1 Agent Coats is that he says --

2 THE COURT: If he can't recognize it --

3 MR. BRYAN: So we're not allowed to present
4 relevant information to our defense?

5 THE COURT: You can ask this agent what kind of
6 instruction, what kind of direction, what kind of control
7 did you give to Mr. Griffin? How did you ensure and
8 satisfy yourself that he was complying with those
9 instructions? Were there occasions when you told him that
10 to do specific things and take specific steps? That lays
11 the foundation, that lays the groundwork. Playing a bit of
12 a partially audible tape doesn't do anything, especially if
13 we can't hear what the agent's saying.

14 Let's at least, first, say whether the agent --
15 the if the agent says I never told him to do anything, he
16 was entirely on his own, that's one thing. If he says I
17 told him to do X, but not to do Y, you can impeach with
18 that evidence, even though it's a collateral, but I'm
19 not -- at this point, I'm not going to permit the recording
20 to be played because in light of what Mr. Sofer's
21 represented as to its audibility issues. Please move on.

22 (Sidebar concluded.)

23 BY MR. BRYAN:

24 Q. Agent Radcliff, your responsibilities, as it
25 related to Darren Griffin, obviously, you were providing

1 him some guidance on how to conduct his affairs when he was
2 working undercover on your behalf, correct?

3 A. Can you be more specific about that?

4 Q. Well, were there times that you ever, in essence,
5 tried to direct Mr. Griffin in certain ways in an effort to
6 maybe gather more information?

7 A. You're talking about in the conduct of an
8 investigation?

9 Q. During the context of this investigation, were
10 there times where you, in essence, coached him on how to
11 maybe try to get about gathering additional information?

12 A. Yes.

13 Q. And also coached him on how not to ask certain
14 questions and what questions to ask?

15 A. Yes.

16 Q. Okay. During this case, during this
17 investigation, you were aware that Mr. Griffin was offering
18 individuals in this case the ability to train, that he was
19 setting out some sort of training program?

20 A. That is correct.

21 Q. And part of your concern as the agent was, you
22 didn't really want to train the individuals, but you wanted
23 to give them the perception that you were going to train
24 them, correct?

25 A. That's correct.

1 Q. So various times throughout this investigation,
2 isn't it true that Mr. Griffin made representations about
3 the training that he can provide, but then would frequently
4 provide excuses for why they couldn't begin their training
5 right away?

6 A. That's correct.

7 Q. And one of those excuses was as it related to
8 putting forth a place to train, correct?

9 A. Specifically?

10 Q. Well, specifically, Mr. Griffin talked about this
11 farm that he was preparing so that they could go and train
12 on this farm, correct?

13 A. I do recall that, yes.

14 Q. And do you recall that Mr. Griffin even talking
15 about lining this barn with hay bales and things like that
16 so as to muffle shooting that may be taking place inside
17 the barn?

18 A. I don't recall the specifics.

19 Q. Okay. But do you recall him, in essence,
20 delaying the actual beginning of the training by saying
21 that, you know, the barn's not ready yet or --

22 A. Yeah.

23 Q. -- or the training grounds aren't ready yet?

24 A. Yes.

25 Q. Okay. Also as it related to -- to this training

1 ground, do you recall Mr. Griffin developing a concept of
2 the EPA was doing a study out by the -- by the farm?

3 A. I don't recall that, I'm sorry. The -- that --
4 again, I don't recall specifics.

5 Q. Okay. And this was, in order to delay the
6 defendants or delay anybody who was he was offering
7 training to the opportunity to actually train, correct?

8 MR. SOFER: Objection. He just said he didn't
9 recall.

10 THE COURT: I agree, sustained.

11 BY MR. BRYAN:

12 Q. Well, if we've heard evidence already in this
13 case that Mr. Griffin used the excuse of an EPA study
14 taking place out there, would that be consistent with your
15 directive to Mr. Griffin that he had to sort of stall and
16 not actually get these guys training?

17 A. I recall, correct, that we were delaying any of
18 the training out at the location, the farm being as you
19 said.

20 Q. Okay. Now, as it related to VIP or security
21 training, do you recall Mr. -- Mr. Griffin using as an
22 excuse the quote, I'm waiting on a package before I can
23 begin the security training?

24 A. No. I don't recall that specifically.

25 Q. Okay. Sort of a package that he needed something

1 from the state before he could start and employee people in
2 the security company, do you recall any of that?

3 MR. SOFER: Objection. He already said he didn't
4 recall.

5 THE COURT: I agree.

6 MR. BRYAN: One moment, Judge.

7 BY MR. BRYAN:

8 Q. Sir, again, it's difficult, I know, for anyone to
9 recall dates so many years after the fact. Do you recall
10 an occasion during your investigation Mr. Griffin now being
11 with Mr. Amawi in Mr. Griffin's apartment that you were, in
12 essence -- oh well, during these times that Mr. Griffin was
13 meeting with the defendants, were you sometimes able to
14 listen in on what was going on in the conversation?

15 A. Agents -- there were occasions when agents were
16 able to listen in. I, personally, no.

17 Q. And sometimes -- sometimes, Mr. -- Mr. Griffin
18 either had on his person or at his apartment a transmitting
19 device that allowed you to contemporaneously listen into
20 the conversation as it was occurring?

21 A. In his apartment?

22 Q. In his apartment or even when he was out on the
23 road?

24 A. Yes.

25 Q. But specifically, as it relates to his apartment,

1 do you recall a time in October of 2004, October 21st, to
2 be precise, where you were listening in on Mr. Griffin as
3 he was engaged in conversation with Mr. Amawi?

4 A. I don't recall it. If you have something to
5 refresh my memory -- and I apologize counselor, because
6 it's --

7 THE COURT: You may approach.

8 BY MR. BRYAN:

9 Q. Sir, I'm going to show you what's been -- what's
10 identified as Government's Exhibit 1D5, conversation date
11 10-21-04. It's a copy of a --

12 THE COURT: Well, why don't you ask him, do you
13 recognize what it is?

14 MR. SOFER: Judge, I don't know if the record --
15 maybe I heard it wrong. I thought the witness said he
16 personally never did listen to the contemporaneously, but I
17 may be wrong about that.

18 BY MR. BRYAN:

19 Q. Sir, did you, at times, listen in to
20 conversations while Mr. Griffin was engaged in his
21 activities?

22 A. And -- at Mr. Griffin's apartment, not
23 Mr. Amawi's apartment.

24 Q. That's correct, Mr. Griffin's apartment?

25 A. Yes.

1 Q. Okay. And do you recall a time in October of
2 2004 where you were listening in on this conversation and
3 you called Mr. Griffin on his cell phone?

4 A. No. I don't specifically recall.

5 Q. Okay. Sir, I'm handing you a portion of that
6 transcript, and I'm just going to ask you to read the first
7 page of this transcript and see if any of that helps
8 refresh your memory of what happened that day.

9 A. Okay, sir.

10 Q. Did reading the first page of that transcript
11 help refresh --

12 A. No.

13 Q. -- your memory of what happened that day?

14 A. No.

15 Q. Could you read the next page then, sir.

16 A. I still don't recall this.

17 Q. So by reading the transcript, the first part of
18 that transcript, it appears that Mr. Griffin received a
19 telephone call from somebody?

20 MR. SOFER: Objection. The witness does not
21 recall.

22 THE COURT: I agree.

23 MR. BRYAN: Your Honor, may we approach?

24 THE COURT: Do you recall an occasion which you
25 may have called Mr. Griffin while he was in the company of

1 other defendants that you placed the call?

2 THE WITNESS: Oh, I've done that, yes, Your
3 Honor.

4 THE COURT: And are you able to tell, looking at
5 that transcript, whether that was one three of those
6 occasions?

7 THE WITNESS: No, Your Honor.

8 BY MR. BRYAN:

9 Q. Sir, one of the things that we discussed before
10 in your testimony dealt with this concept of conspiracy,
11 correct, that you needed two or more individuals involved
12 in a criminal agreement for a conspiracy?

13 MR. SOFER: Same objection.

14 THE COURT: I agree.

15 MR. BRYAN: That's just a foundation question.

16 THE COURT: Then ask the next question.

17 Jury will disregard that.

18 BY MR. BRYAN:

19 Q. Do you recall -- when we were listening to the
20 tape that Mr. Hartman played, there was a reference to a
21 Mahmoun when he first began playing the tape that he played
22 for you when Mr. Hartman was cross-examining you. Do you
23 recall that?

24 A. Yes.

25 Q. And do you recall a person by the name of Mahmoun

1 who was from the Bowling Green, Ohio area, that Mr. Amawi
2 had discussed with Mr. Griffin --

3 MR. SOFER: Objection, Your Honor.

4 Q. -- in your investigation?

5 MR. SOFER: Government objected also when that
6 portion of the tape was being played as not being relevant.

7 THE COURT: I agree, sustained.

8 BY MR. BRYAN:

9 Q. Well, do you recall that -- do you recall -- you
10 recalled several meetings between Mr. Amawi and Mr. Griffin
11 at Mr. Griffin's apartment?

12 A. The number, I don't know. There were meetings at
13 Mr. Griffin's apartment.

14 Q. Okay. Now, the first meeting that happened in
15 Mr. Griffin's apartment on October 21st, 2004, do you
16 recall advising Mr. Griffin that you wanted to see if he
17 could get Mr. Amawi together with this gentleman named
18 Mahmoud, this guy from Bowling Green, do you recall ever
19 directing Mr. Griffin to do that?

20 A. I'm sorry, sir, I don't specifically recall that.

21 Q. Okay. Was that part of your investigation that
22 you wanted to see if you could draw out other people in the
23 community to assess them for threat purposes?

24 A. We were attempting to find out if there were
25 individuals out there that were looking to engage in

1 training for terrorist activity.

2 Q. Right. So you were encouraging Mr. Griffin to
3 encourage Mr. Amawi to bring people to their meetings,
4 correct?

5 A. Yes.

6 Q. And do you recall encouraging Mr. Griffin to
7 encourage Mr. Amawi to bring this gentleman by the name of
8 Mahmoud to a meeting in October 21st, 2007?

9 A. Your general question, I recall. The specific
10 one, sir, I'm sorry, I don't recall.

11 Q. Okay. Do you recall Mr. Amawi showing up at
12 Mr. Griffin's apartment by himself on an occasion when you
13 thought that Mr. Amawi was going to bring this Mahmoud with
14 him to see Mr. Griffin?

15 MR. SOFER: Objection, Your Honor.

16 THE COURT: Sustained.

17 MR. BRYAN: May we approach, Your Honor?

18 THE COURT: Sure.

19 (A sidebar conference was had on the
20 record.)

21 THE COURT: I don't see the point of it. Also,
22 it depends upon hearsay. How -- how he would think that
23 Amawi is going to come with somebody or not come with
24 someone and whether or when he showed up with or without
25 somebody.

1 MR. BRYAN: Your Honor, the whole purpose for why
2 I wanted to play the tape for this day is because the tape
3 clearly establishes that this -- that an agent contacted
4 Mr. Griffin, had a telephone conversation with him, and
5 expressed disappointment that Mr. Amawi didn't --

6 THE COURT: If you want to, we'll keep this agent
7 after we adjourn the jury. We'll let him listen to the
8 tape to see if he recalls it was he. If he doesn't recall
9 it was he and Mr. Griffin hasn't testified that it was he
10 and there's no basis for playing the tape and attributing
11 to him that this video statement.

12 We don't know. Coats said it wasn't he. If
13 Radcliff said it wasn't he, then we don't know.

14 MR. BRYAN: Your Honor, as it relates to this
15 line of questioning -- though all I'm trying to establish
16 at this agent's direction was he trying to get Darren
17 Griffin to encourage the other defendants to bring people
18 together.

19 MR. SOFER: He already testified that he did. He
20 asked that question generally. Did he try to get the
21 defendants to bring other people? He said absolutely, that
22 --

23 MR. BRYAN: This is an effort to try to restore
24 the agent's memory of this particular incident.

25 THE COURT: You've shown him the transcript. And

1 I'm saying, my point is, when the jury goes home, we'll ask
2 him listen to that segment and we'll see what he does. He
3 has no present recollection. The transcript doesn't work,
4 and I don't want to take the time right now.

5 I'm telling you, move onto some other subject, or
6 if this is the last one, then we'll excuse the jury and
7 we'll go to an audibility hearing. That's all I'm saying.
8 I said that half an hour ago, that Mr. Sofer has
9 represented that -- that the agent has indicated he doesn't
10 recognize his voice. In any event, it's considerably
11 inaudible. And if he doesn't recognize it and the tape is
12 inaudible, no amount of talking about it is going to
13 restore his recollection. Okay.

14 (Sidebar concluded.)

15 BY MR. BRYAN:

16 Q. Sir, you testified that you don't recall
17 Mr. Griffin using this concept of a package for why he was
18 waiting on starting up his security company. Do you recall
19 not recalling that?

20 A. I don't recall. I know we were -- there were
21 different times that we would stall for time. I don't
22 recall specifics.

23 Q. In reading that transcript, did you see anything
24 in that transcript that recalled or the mention of a
25 package that Mr. Griffin didn't have yet or anything like

1 that?

2 A. No. I don't recall.

3 Q. Okay. Do you recall reading that in the
4 transcript?

5 A. Yes, sir.

6 Q. Okay. But you don't recall what package
7 Mr. Griffin is referring to?

8 A. No, I don't recall.

9 Q. But Mr. Griffin did reference a package that
10 said, Sorry, brother, he doesn't have the package, correct?

11 MR. SOFER: Objection. Hearsay.

12 THE COURT: Sustained.

13 BY MR. BRYAN:

14 Q. Now, sir, as it relates to directing Mr. Griffin
15 to direct the defendants to bring others to train, do you
16 also recall directing Mr. Griffin to try to acquire from
17 Mr. Amawi copies of the videos that they watched?

18 A. Yes.

19 Q. Okay. Do you recall on October 21st, 2007 when
20 Mr. Amawi appeared by himself at Mr. Griffin's apartment,
21 you advising Mr. Griffin to see if he could take Mr. Amawi
22 back to his apartment to download some videos to give to
23 Mr. Griffin, do you recall that?

24 MR. SOFER: Objection to the form. I think he's
25 drawn the witness to potentially the wrong date, Your

1 Honor.

2 THE COURT: Why don't you ask him without a date
3 whether he recalls that incident and perhaps trying to pin
4 it down.

5 BY MR. BRYAN:

6 Q. Do you recall an incident in October or in the
7 fall of 2004 when you instructed Mr. Griffin to instruct
8 Mr. Amawi to go back to their apartment to -- to download
9 some videos onto some CDs for Mr. Griffin?

10 A. I know they did. I don't recall specific
11 instructions.

12 Q. Okay. And from reading that transcript, did that
13 trigger any memory --

14 A. No, sir.

15 Q. -- of any instructions of that regard?

16 A. No, sir.

17 Q. But from reading that transcript, you can see
18 that's what was going onto happen?

19 MR. SOFER: Objection.

20 THE COURT: Sustained. Jury will ignore that.

21 BY MR. BRYAN:

22 Q. Now, you've referenced in direct examination
23 Government Exhibit 27, which was a compact disc that you
24 received from Darren Griffin, do you recall that?

25 A. Yes. I'd have to see specifically which date was

1 that. Yes, I can -- by the initials and the date, I
2 recognize that.

3 Q. Okay. And that date is November 24th, actually,
4 there's 2004, correct?

5 A. Yes.

6 Q. Kind of looks like it's a six, but it's actually
7 a four, just to be clear?

8 A. Yes.

9 Q. And that's the date that you received that
10 compact disc from Mr. Griffin, correct?

11 A. Yes, sir.

12 Q. And that was the disc that was purportedly given
13 to him by Mr. Amawi after Mr. Griffin asked Mr. Amawi to
14 put some information on that disc, correct?

15 A. Yes, sir.

16 Q. Okay. Now, later on you've testified on direct
17 examination -- on February 7th, 2005 -- you testified about
18 Exhibit 59.

19 MR. BRYAN: If you'll get to Exhibit 59, please.

20 BY MR. BRYAN:

21 Q. And you recognize Exhibit 59 is a disc that you
22 received from Darren Griffin on February 7th, 2005,
23 correct?

24 A. No, sir. I don't, but that is -- that is a copy
25 of a disc, I believe, because it does not have my initials

1 on it.

2 Q. Okay. You may not have been referring to this
3 exhibit, but as I wrote in my notes, I wrote it underneath
4 this exhibit. You also said, though, in around that same
5 time period, that Darren Griffin brought to you two
6 additional items that were two compact discs, do you recall
7 that?

8 A. Yes.

9 Q. And you said different from the first occasion.
10 In the first occasion is when Mr. Griffin actually gave you
11 the disc to keep, Mr. Griffin told you that he may need
12 these discs back?

13 A. Yes, I recall that.

14 Q. And the reason Mr. Griffin gave you the discs to
15 keep the first time was because that was a copy of the disc
16 that Mr. Amawi had given to Mr. Griffin to keep for
17 himself, correct?

18 A. Yes.

19 Q. Okay. But on this occasion, Mr. Griffin said
20 that Mr. Amawi may be asking for these discs back, correct?

21 A. That's correct.

22 Q. When we were listening to that Mahmoun reference
23 in the tape that Mr. Hartman played, Mr. Griffin talked
24 about how he was sort of looking over Mr. Amawi's shoulder
25 to try to be able to identify this person better, either on

1 the computer screen or some piece of paper that was on his
2 desk, do you recall that?

3 A. Yes.

4 Q. And that he was looking for a credit card number
5 as well?

6 A. He wasn't looking for a credit card number, but
7 he saw a piece of paper with a credit card number on it.

8 Q. Okay. Now, in -- and he's basically trying to
9 gather information for you so that you can identify --

10 A. That's correct.

11 Q. -- this person later on? Did Mr. Griffin ever
12 tell you that the reason that he wanted to get these discs
13 back and be able to give them back to Mr. Amawi is because
14 he actually just stole those discs from Mr. Amawi's
15 apartment and brought them to you?

16 A. No, sir.

17 Q. He represented to you that Mr. Amawi gave them to
18 him, correct?

19 A. To the best of my recollection.

20 Q. Okay. But he said he had to get those discs back
21 --

22 A. Yes.

23 Q. -- to Mr. Amawi at some point in time?

24 MR. BRYAN: I have nothing further at this time,
25 Your Honor, except for the matter that we discussed

1 earlier.

2 THE COURT: Okay.

3 Mr. Hartman or Mr. Boss, any questions? Or
4 Mr. Doughten?

5 MR. BOSS: I believe we did our cross already.

6 THE COURT: You did, I'm sorry.

7 Mr. Doughten and Mr. Helmick?

8 MR. HELMICK: No, Your Honor.

9 THE COURT: Redirect?

10 MR. SOFER: Just one moment, Judge, if I may.
11 Just a few, Judge.

12 REDIRECT EXAMINATION

13 BY MR. SOFER:

14 Q. Agent Radcliff, Mr. Hartman asked you whether or
15 not -- he had some question about 61, Government's Exhibit
16 Number 61.

17 MR. SOFER: If you can put that -- this up where
18 the original after that document is.

19 BY MR. SOFER:

20 Q. You don't know where the original is, though,
21 right?

22 A. I do not.

23 Q. Is this, though, the document that was given to
24 you by Darren Griffin on February 9th, 2005?

25 A. Yes, it is.

1 Q. Did you scan it into the file so that there would
2 be a permanent record of what document was given to you on
3 that date?

4 A. Yes, sir.

5 Q. There was some discussion about the difference
6 between the dates of transcription and the date of the
7 investigation?

8 A. Yes, sir.

9 Q. Can you tell the members of the jury whether the
10 date of transcription is the same date you take your notes
11 that are used to prepare the 302?

12 A. No, sir. It's the date of the actual
13 investigation is when any notes are taken.

14 Q. So the record of what would have happened was
15 taken at or near the time that the event took place?

16 MR. HARTMAN: Objection.

17 THE COURT: Well, maybe rephrase. You're leading
18 a bit. Why don't you --

19 MR. SOFER: I am leading, Judge. I think I
20 should have a little tiny bit of latitude here.

21 THE COURT: Go ahead try and --

22 BY MR. SOFER:

23 Q. You get some information from Darren Griffin or
24 from any other source, correct?

25 A. Yes.

1 Q. You take notes. Those notes preserve what
2 information is relayed to you?

3 A. Yes.

4 Q. Those notes are later transcribed into a 302?

5 A. Yes.

6 Q. In other words, typed into a 302?

7 A. That's correct.

8 Q. And that's done by you or is that done by a
9 secretary or some other support personnel?

10 A. It's done by folks that do transcriptions.

11 Q. So you don't actually, at least during the time
12 that this was taking place, as this investigation, you
13 weren't typing most of your own 302s?

14 A. That's correct.

15 Q. Some secretarial person or some other support
16 personal was doing that for you?

17 A. That's correct.

18 Q. But the record that you made was made in your
19 notes?

20 A. That's correct.

21 Q. And those are made -- in what relation were your
22 notes made to the actual events?

23 A. When I was debriefing, in this case, Mr. Griffin.

24 MR. SOFER: Judge, I have nothing else.

25 Your Honor, at this time the government moves its

1 exhibits into evidence including those which are subject to
2 connection.

3 THE COURT: Okay.

4 MR. HARTMAN: Judge, we have nothing further
5 except to move our audio recording into evidence as well.

6 THE COURT: Okay.

7 MR. SOFER: And I will object to that.

8 THE COURT: We'll do that at sidebar.

9 Any further questions?

10 MR. BRYAN: Nothing further. Thank you, Your
11 Honor.

12 MR. DOUGHTEN: Nothing, Your Honor.

13 THE COURT: Ladies and gentlemen, we'll adjourn
14 for the afternoon and start tomorrow at 8:30. See you
15 then.

16 (Jury dismissed at 4:20 p.m.)

17 THE COURT: Shall we play that tape so we can
18 either excuse Agent Radcliff or tell him to come back
19 tomorrow morning?

20 MR. TERESINSKI: I believe so, Your Honor.
21 Mr. Sofer just stepped out to use the restroom.

22 THE COURT: Why don't we take a five-minute
23 break?

24 (A brief recess was taken.)

25 THE COURT: Okay. Let's tee that up and get the

1 agent back.

2 MR. SOFER: Judge, I think what we can do, if
3 it's acceptable to counsel, is we have a version of their
4 transcript. They have a new thing -- give that to The
5 Court. I can give The Court, also, our version of the
6 transcript -- at least the things that we listened to here.
7 I don't know if putting them side by side will be helpful
8 to Your Honor to do that or whether you just want to make
9 your own assessment -- which I think is probably the most
10 important thing -- of what The Court can hear.

11 THE COURT: Let me see what the different
12 versions are. Or are not.

13 MR. SOFER: Just the one with the exhibits,
14 that's the government's.

15 THE COURT: Rather than highlight.

16 MR. WHITMER-RICH: The highlight will be --

17 THE COURT: Okay. And Agent, it's my
18 understanding that another question is whether you
19 recognize the voices on the tape and whether there's any
20 portion of the tape which you believe is or might be your
21 voice. I think that's one of the issues. The other is
22 simply whether for me to hear whether I can hear.

23 MR. SOFER: Yes, Judge. And just to clarify, I
24 think that Agent Radcliff has listened to this already, but
25 I'm not 100 percent certain about that.

1 MR. BRYAN: Your Honor, there's actually two
2 portions. The first portion is the telephone conversation,
3 and then there's a transcript that follows that. And I
4 think the transcript that follows helps recall what was
5 said before because of the context of the how the
6 conversation changes.

7 (Audio playing.)

8 THE COURT: Okay. Can we replay it? I was only
9 able to look at one transcript.

10 MR. SOFER: Understood. Let me also just say,
11 Your Honor, that the government -- whatever the government
12 did -- I didn't do this, one of our other team members did
13 it -- and it was done, once again, using Bose headsets, so
14 I can tell you from me listening to -- there were -- I can
15 barely hear anything.

16 THE COURT: That was my reaction. There were
17 random -- there were random words that seemed audible, but
18 in terms of -- in terms of any sort of coherence or
19 meaning, the clips, but let me watch the one on the monitor
20 and if you can key it back up, please.

21 MR. BRYAN: Your Honor, if somehow, the courtroom
22 mics can be turned off, too, I think that might provide a
23 little extra --

24 Your Honor, for the record, this first telephone
25 conversation, we're not -- this just puts it in context.

1 (Audio playing.)

2 THE COURT: Actually, I was able to hear a good
3 bit more with that. There was some portions of it that
4 were not comprehensible to me. Maybe we should go by
5 having played a segment --

6 First of all, Agent, do you recognize the voice
7 on there?

8 THE WITNESS: I can't say absolutely what's on
9 there.

10 THE COURT: In terms of simply the voice of the
11 person speaking with Mr. Griffin, do you recognize that as
12 yourself or don't you know?

13 THE WITNESS: I don't know, I'm sorry.

14 THE COURT: Okay. Do you recall having a
15 conversation of that sort with him?

16 THE WITNESS: I may have, Your Honor, I don't --
17 I don't know. There are so many conversations in the
18 context of so many investigations.

19 THE COURT: Do you recall whether at some point
20 you asked him to procure any videotapes and return them to
21 Mr. Amawi?

22 THE WITNESS: I may have, I don't know. I
23 specifically don't recall.

24 THE COURT: If you'll step out for a second,
25 okay.

1 (Agent Radcliff left the courtroom.)

2 THE COURT: I don't -- I don't think there's any
3 basis for that's Agent Radcliff's voice. He listened to
4 it. If anybody's going to recognize his voice, it's he.

5 MR. SOFER: And again, Judge, I would concede
6 that during this time of the investigation, that it likely
7 would be him, but that doesn't mean it couldn't be someone
8 else.

9 And while I also must admit that the second time
10 through, I was able to pick up more than the first time. I
11 bet if you listen to it five and six times, you might
12 continue to pick it up bits and pieces, but I'll say this,
13 in order to really parse this out, which I do not -- I will
14 say this, from the government's standpoint, the transcript
15 that is rolling on this tape does not accurately reflect
16 that conversation, and I think it has language in it that
17 goes well beyond that which I was able to discern. And so
18 for that reason, and the fact that the witness is unable to
19 recall or identify his voice, in particular, I just don't
20 think it's appropriate.

21 I would also add, Your Honor, that counsel asked
22 the witness and received an answer from him that he did
23 sometimes coach the -- the informant, Darren Griffin, to
24 behave in a certain way, to ask him certain things, and I
25 believe he even asked -- I could be wrong, but I think the

1 record will reflect that he even said that he asked him to
2 procure discs sometimes during his cross-examination. Put
3 all those things together, Judge, I just think to play this
4 tape and more importantly to roll this transcript for the
5 jury would be inappropriate.

6 MR. BRYAN: Your Honor, if I may, first of all,
7 as it relates to the transcript --

8 THE COURT: I'm having trouble hearing you.

9 MR. BRYAN: I apologize, Your Honor.

10 First of all, as it relates to the transcript
11 itself, the transcript, quite frankly, was prepared by me,
12 Your Honor, after sitting for a long time with Mr. Amawi
13 and listening very closely to what was being said. I would
14 submit to The Court that what is submitted in -- and
15 obviously there's still a lot of unintelligible scattered
16 throughout the transcript, we didn't try to just
17 self-insert stuff. Those are words that as an officer of
18 The Court I would submit to Your Honor that I heard after
19 much, much listening to these tapes.

20 Now, I would submit that the government has had
21 the opportunity to do that with portions of their
22 transcripts that were also difficult to hear. Mr. Griffin
23 himself testified that he listened to the tapes for hours
24 upon hours, and he was the one that they used to, in
25 essence, create their own transcript. And there are

1 difficult portions of the government's tape that are
2 difficult to hear, yet we rely upon the fact that
3 Mr. Griffin said he heard those words as being part of the
4 transcript.

5 I -- as I listened to it, obviously as Your Honor
6 did as well, I'm able to hear -- I was able to hear things
7 better the second time than I was the first time. I would
8 submit to Your Honor that everything that is in that
9 transcript is something that I heard. And I think it's
10 also clear from the context of what happens after that,
11 what follows from that conversation, is that Darren Griffin
12 turns to Mr. Amawi and says, hey, let's go back over to
13 your house and that that was the instruction that he was
14 getting.

15 The -- I think the clearest thing in the
16 transcript is the agent saying words to the effect, see if
17 you can go download some videos and bring them back to me,
18 or words to that effect. To me, that was the clearest
19 thing, and that's the part of the transcript that we're
20 trying to get in.

21 Earlier there was a reference to the person who
22 didn't show up. And that, admittedly, is more difficult to
23 hear, but at the beginning of the transcript, you can tell
24 from Mr. Griffin's responses that, yeah, you know, in
25 essence, the agent was inquiring where is the other guy,

1 and Griffin's basically just saying, yeah, he decided not
2 to show up, or whatever.

3 So those are the two points that I was trying to
4 make as it related to this agent, and I think the
5 transcript of what occurred on that --

6 THE COURT: What is the significance of those
7 points relative to this agent's testimony rather than
8 relative to Griffin? And I don't recall -- if you come up
9 during Griffin's testimony, because he would have been the
10 one to the extent that would have been able to recognize
11 either the speaker or what was being said or could have
12 testified about the flow of events.

13 Certainly could have been asked prior to this,
14 you were not -- I assume this is the case, prior to this,
15 had you suggested to Mr. Amawi that we go get the tapes,
16 no. You had a conversation, yes, and with -- I would
17 assume Griffin would say it was Radcliff, I don't know, but
18 so far we don't know. And --

19 MR. BRYAN: And perhaps --

20 THE COURT: -- and again, Griffin miss I mean
21 peeved if you want to recall him. I don't understand what
22 this has to do with Radcliff, because Radcliff admitted
23 that he's instructing him, he's working with him, he's
24 handling him, and --

25 MR. BRYAN: That's your -- first of all, it does

1 have to do with Agent Radcliff because Agent Radcliff is
2 instructing the investigation to take a certain course and
3 that is, you know, to get people together and to try to
4 collect audio tapes -- not audio tapes, but videotapes from
5 Mr. Amawi, that he's instructing Griffin to do so. Griffin
6 implied --

7 THE COURT: But I think that this video matters
8 because Griffin has already --

9 MR. BRYAN: If I may Your Honor, as it relates to
10 whether or not we could have cross-examined Griffin with
11 this bit of transcript, quite frankly, Your Honor, in that
12 juncture of the case, I believe that Mr. Sofer would have
13 objected and said it's beyond the scope of cross, it
14 doesn't go to impeach him in any way or anything like that.
15 And quite frankly, Your Honor's correct, the only other way
16 to introduce this -- there are three ways to introduce this
17 testimony, is through the agent, because I think he was
18 part and parcel of what occurred here. I'm not asking to
19 introduce everything that happened prior to leading up to
20 this, only what happened when the agent injected himself
21 into the process and gave Mr. Griffin some direction.

22 THE COURT: But he has no recollection, that's
23 the whole problem.

24 MR. BRYAN: The only thing I can say --

25 THE COURT: There's not enough there to figure

1 out what's going on.

2 MR. BRYAN: The only thing I can say in response
3 so that Your Honor is I prepared, this line of
4 cross-examination for Agent Coats because I can't
5 distinguish between this voice, whether it's Agent Coats or
6 Agent Radcliff. I was told at the time by The Government
7 that it's not Agent Coats, it's Agent Radcliff. So now
8 that I'm trying to proceed, Your Honor, present this
9 evidence through Agent Radcliff, I'm being presented with
10 the obstacle that Agent Radcliff can't decipher his own
11 voice, can't hear his own voice on the tape. I mean, is
12 there any other agent that worked for the government during
13 this investigation that it could be? If it's not Agent
14 Coats, to me, it has to be Agent Radcliff whether or not he
15 has sufficient evidence to --

16 THE COURT: The point simply is to the extent
17 that this is admissible at all -- and I gather that it's
18 your contention it is because it shows that there were
19 occasions when Mr. Griffin was instructed to take various
20 steps -- candidly, I don't think there's -- I don't see how
21 there is any more improper, inappropriate or the subject
22 upon which one can raise questions about either the
23 propriety of the investigation or the credibility of either
24 Agent Radcliff, Agent Coats, when he testifies, or
25 Mr. Griffin. Because that's exactly what happens when you

1 wire up an informant, you count out the money and record
2 the bills and make sure he's clean, send him in telling him
3 to buy dope. He comes out with the dope, you go in, and
4 you find the bills in the drug defendant's pocket. You
5 know there's nothing pertinent or probative to that.

6 The fact that this agent was telling Mr. Griffin
7 to take certain steps that have the effect of procuring or
8 possibly procuring evidence, you know, just -- and it's
9 common sense that the agent would be doing that. The
10 problem is Griffin is the one to tell you, yes, we had a
11 conversation, I don't -- I can't recall what was said. But
12 to me, you start talking about going and getting the
13 videos, you get the videos, you give them to Radcliff, and
14 you get them back. That's all that the jury needs to know.
15 What --

16 MR. BRYAN: Well, I mean, Your Honor, I
17 understand I think -- I think the analogy to the drug case
18 is a little bit apples and oranges, and I say it for this
19 reason, the government has already made a point of the fact
20 that Mr. Amawi allegedly gave Mr. Griffin videos and
21 Mr. Griffin testified that the purpose of the videos and
22 Mr. Amawi giving him the videos was for training purposes
23 so he could use the videos to train the brothers. What
24 this tape demonstrates, Your Honor, quite frankly, is the
25 genesis at the very beginning of Darren Griffin's video

1 collection activities on behalf of the FBI and what it
2 shows is that this was the FBI's idea to ask Mr. Amawi to
3 download videos.

4 THE COURT: And that's impeaching Mr. Griffin
5 through collateral evidence. I mean, this is going to show
6 Griffin lied as to the purpose for which he procured the
7 videos from Mr. Amawi. The person to ask about that is
8 Mr. Griffin.

9 The problem is you don't have Radcliff --

10 MR. BRYAN: Your Honor, if I may, what it also
11 demonstrates, the conversation after the telephone
12 conversation between Mr. Amawi and Mr. Griffin, is that
13 there's absolutely no training reason being offered.

14 THE COURT: Fine. And that's my --

15 MR. BRYAN: The 9-11 conspiracy, what he wanted,
16 and that's born, also, I think for the agent in the manner
17 in which he's conducting the investigations as well.

18 THE COURT: You can do that with Griffin. And
19 Griffin may be able to tell you who the person was, and it
20 may be likely it was Coats or Radcliff. And that's the
21 same transcript two different versions. Griffin can look
22 at it and see, do you recognize what was said to you at
23 that time and see what he says. And I would be inclined to
24 play the transcript itself to Mr. Griffin, and then you can
25 develop through what happened and argue it for the jury.

1 MR. SOFER: If I may, Judge, a couple things.
2 Again, we're going to end up having this -- having this
3 argument some other time, but my view, the government's
4 view, that is the time to cross-examine Darren Griffin is
5 over. They don't get two chances to cross-examine Darren
6 Griffin. This is why we have -- we have fundamentally
7 opposed this notion of recalling him unless there's some
8 other purpose.

9 THE COURT: I disagree with that. They, in the
10 presentation of their case, can recall Mr. Griffin. He's a
11 witness identified as opposing party and ask leading
12 questions to develop whatever evidence they want to, in
13 this case, gather from what Mr. Bryan's saying, either to
14 show that Griffin was not telling the truth when he said
15 they were obtained for purposes of, quote, training or also
16 to show the way in which it was Griffin conducting the
17 operation that was the Bureau.

18 Now, again, I'm not sure that that's particularly
19 significant here, or startling, but I do think if that's
20 something that they want to develop in their -- their case,
21 they can do so.

22 And I -- I -- let's put it this way, I'm not
23 acquainted with any doctrine that says to a lawyer in a
24 criminal case defending a defendant that says, you have to
25 ask all the questions you might want to ask of the

1 government witness, or at least those which may relate to
2 his credibility, when he's presented by the -- the
3 government.

4 MR. SOFER: I think, Your Honor, that's exactly
5 what the law says that you're talking about, those that
6 relate to his credibility, that's -- that's what
7 cross-examination is. And you don't, then, get to -- after
8 you had one round of cross-examination, just recall
9 government witnesses in your case to impeach their
10 credibility.

11 THE COURT: If you find me cases that make clear
12 that this video is of, what I understand, very general
13 discretion conduct order for examination and that's fine.

14 MR. SOFER: The other thing I would say, you can
15 see why that is impractical, I believe, and the law would
16 forbid it, for one thing. The government calls a witness,
17 the defense attacks his credibility, the defense now calls
18 that witness and attacks his credibility again. The
19 government then puts on evidence which would tend to
20 support the credibility of that witness. You're going to
21 have two identical -- what, essentially, would force the
22 government into a position, then, is to play its case over
23 again. And the notion that we would go down that road, I
24 think, shows why that's not a -- appropriate way of calling
25 witnesses.

1 But -- and Your Honor said something specifically
2 about this, which I think is very important, if it's to
3 show that Darren Griffin lied about a couple things. First
4 of all, defense has already established through this
5 witness -- if we can just stay on the point that we're on
6 first -- the defense already established through this
7 witness that he has been provided coaching and did, I
8 believe, ask Darren Griffin to go to try to get discs.
9 That's just what Mr. Bryan was trying to establish. He's
10 got that already. He doesn't --

11 I don't believe, then, that you, especially under
12 the circumstances here, that it's, then, appropriate to
13 play this tape, which the witness doesn't recall. And
14 which, just as an example of that kind of behavior, maybe
15 if, in fact, it is Agent Radcliff -- I'm not saying it is
16 Agent Radcliff, I can't speak to whether he recognizes his
17 voice or not. That's the first issue that The Court's
18 confronted with. I would like what opportunity to -- to
19 when we get there, Your Honor -- and I'd like Your Honor to
20 keep an open mind as to this notion, because it's clear to
21 the government that, throughout the cross-examination of
22 other witnesses, they continue to try that as a defense.
23 The defense continues to try to impeach Darren Griffin, and
24 impeachment is the subject of cross-examination.

25 If there's some other purpose for calling a

1 government witness in a defense case, that's different.
2 But certainly to try to demonstrate to the jury that the
3 witness was not credible, that the witness did something
4 that they had an opportunities to ask on cross, to then
5 call them in their case, and then have the government have
6 to respond with all the evidence that would tend to show
7 that that's not true, essentially you -- you retry the
8 entire case. It doesn't make any sense.

9 THE COURT: It depends, okay. Clearly, the
10 defense can offer testimony that contradicts testimony of
11 the government witness.

12 MR. SOFER: Certainly.

13 THE COURT: Taking into consideration and
14 pursuant to instructions in that regard as to evaluating
15 credibility and believability, to the extent to which the
16 testimony of the witness is supported or disputed by that
17 of other witnesses or evidence.

18 MR. SOFER: And --

19 THE COURT: And I don't expect we're going to
20 spend a great, huge amount of time in, quote, impeaching
21 Mr. Griffin. The point I was picking up on, Griffin said
22 at one point, the purpose was for training. But I also
23 think that it's appropriate for them to ask Griffin about
24 basically whose idea was this anyway.

25 MR. SOFER: I don't disagree, Judge. But they

1 had -- all I'm saying is, they had their opportunity to do
2 that. That's cross-examination.

3 Now, again, if we're going to go down this road
4 with Griffin being called as a defense witness, then the
5 government is going to -- is going to put in tapes again of
6 all the instances where the training did have some
7 something to do with a position consistent with the
8 government's position.

9 All I'm asking Your Honor to do now is reserve a
10 decision on this notion and reserve it as to particular --
11 as always with you, do a lot of this discussion in any case
12 about hypothetical situations -- and I'm just asking The
13 Court to wait until we get to something real.

14 Here, Your Honor, what The Court's faced with
15 here, I would say defense has accomplished the point that
16 they want to. And the government concedes, by the way --
17 I'm not going to stipulate to it, but this is not something
18 that the government has -- is fighting in this case,
19 that -- that as you said, Darren Griffin acted like -- like
20 a cooperating witness in any number of cases where he goes
21 out and does things at the behest of the FBI. I think some
22 of the cross of Darren Griffin was, he wasn't doing this at
23 the request of the FBI, now they want to say it is. We'll
24 let them make those arguments. They did get their point
25 across in front of the jury, which was --

1 THE COURT: Let me -- let me hear from
2 Mr. Hartman.

3 MR. HARTMAN: Judge, I just would like to -- I
4 would just like to say, Mr. Sofer keeps referring to the
5 fact that we're trying to impeach Mr. Griffin through
6 government witnesses. And I -- I think what Mr. Bryan is
7 trying to do -- I won't speak for him, but in some of the
8 cases, what we are doing is showing the interaction between
9 Mr. Griffin and certain government witnesses because, quite
10 frankly, government conduct is at issue in this case.

11 And you have said on -- in some of your rulings,
12 okay, but you've got to save that for your case in chief.
13 Okay. You made your rulings. But it's not that we're
14 trying to impeach Griffin necessarily, as much as putting
15 the government's --

16 THE COURT: That's what I thought I heard him
17 say.

18 MR. HARTMAN: I just --

19 THE COURT: Griffin had said it was for training
20 and --

21 MR. BRYAN: Your Honor, it serves multiple
22 purposes, and one is to impeach Griffin, but it's directly
23 relevant to the agent's investigation at that juncture of
24 the case, how he was -- how he was steering Griffin. And
25 you know, we've --

1 THE COURT: I'll tell you what I'm going to do.
2 You can resume with the agent tomorrow, and you can ask him
3 specifically in terms of -- Agent, what kind of interaction
4 did you have with Mr. Griffin with regard to what you are
5 asking him to do? Did you -- from time to time, did you
6 give him specific instructions about things to do or things
7 to say? Not whether he can recall any specific one. And
8 if he says yes, that's fine. And -- and were there -- were
9 there occasions that you can recall that you would take the
10 initiative in that regard and suggested activities on his
11 part that took him in a particular direction?

12 I think that's all they're trying to establish.

13 MR. SOFER: And Your Honor, I believe if you read
14 the record back, that's exactly what has already happened.

15 THE COURT: I understand. I'm going to say in
16 lieu of going through this exercise, I'm going to let him
17 do that with the agent tomorrow. This is simply not
18 audible enough. All we know -- and is this excerpt
19 otherwise in the record?

20 MR. SOFER: I don't believe it is in anyway,
21 Judge.

22 THE COURT: Do you want to play this at some
23 point in your case to show that this is an instance where
24 the jury can draw the inference, that that's what was going
25 on? If it's that significant to do so -- if there's no --

1 Griffin talked these people into showing him various
2 videos, he gave the videos back or to the agent, and some
3 of them he gave back to, I think, Mr. Amawi.

4 And -- go ahead.

5 MR. BRYAN: Your Honor, if I may, I mean,
6 obviously, in the effort to defend Mr. Amawi, there are
7 certain things that I'm trying to get before the jury to
8 see. If we were to try to cross-examine Mr. Griffin with
9 this exact excerpt, I am sure Mr. Sofer would have stood
10 up, would have objected, said, Your Honor, this is beyond
11 the scope of cross-examination. It doesn't fulfill the
12 rule of completeness. We didn't play anything even from
13 that day.

14 THE COURT: I understand.

15 MR. BRYAN: He would have raised --

16 THE COURT: Now is not the time for that. I'll
17 hear your argument and his when you undertake to recall
18 Mr. Griffin, and then to ask him specific lines of inquiry.

19 MR. BRYAN: But to be blunt, what the defense is
20 trying to do and what the government is trying to do -- and
21 I don't think this is any secret -- is the government's
22 trying to get as much of their case before the jury as they
23 can get before the jury. And to the extent that they can,
24 they're trying to keep us from being able to argue as much
25 as our defense to the jury as we can.

1 THE COURT: The case is not with you yet. When
2 it is, if I exclude that opportunity, then you can make
3 this argument, okay?

4 MR. BRYAN: But in an effort to try to get into
5 the record that which we want to be able to argue to the
6 jury --

7 THE COURT: You have another opportunity. If I
8 don't grant you that opportunity because I accept
9 Mr. Sofer's argument, then you have an issue on appeal.
10 Now is not the time.

11 If nothing else, this is substantially afield
12 from direct examination. It's part of your defense to show
13 that, I gather, that show that Griffin was out doing
14 whatever he was doing, in part at least, at the direction
15 of the FBI. I'm not sure what -- where that gets you, but
16 that's up to you. That's the point that you want to try to
17 make now, and I'm saying to you now, on this conversation,
18 I'm not going to -- as to this conversation, I'm not going
19 to permit it at this time. We'll, revisit it when you
20 recall Mr. Griffin in your case, and Mr. Sofer objects, and
21 if I pull a rug out from underneath you, I have done that,
22 and we all live with that on appeal --

23 MR. BRYAN: I understand, Your Honor.

24 THE COURT: -- if you lose. If you don't, that's
25 fine.

1 MR. BRYAN: Your Honor, as it relates --

2 THE COURT: And I have, you know, under Rule 611,
3 I have very substantial discretion to control the -- the
4 mode of examination and that's exactly what I'm doing right
5 now, exercising that discretion to tell you the time will
6 come in your case, if it becomes pertinent.

7 All I'm trying to suggest to you, if you want
8 Agent Radcliff back briefly tomorrow to ask him
9 specifically, were there occasions when you, on your own
10 initiative, told Mr. Griffin to do certain things? If he
11 says, yes, then you can say, and the purpose of doing so is
12 to gain evidence that might help lead to a conviction in
13 this case. And if he says, no, to gather information.

14 But we're here today, aren't we, and all this
15 evidence is being presented. And much of it was gathered
16 by Mr. Griffin. I mean, again, if it -- that's the point
17 you're trying to make with Radcliff, I think you can still
18 make it and can make it directly.

19 MR. BRYAN: Your Honor, just -- if I may, I agree
20 with Mr. Sofer, I believe I've already made that point.

21 THE COURT: Okay.

22 MR. BRYAN: My only purpose for bringing Agent
23 Radcliff tomorrow morning would be to play the tape, and if
24 I'm not going to be permitted to do that --

25 THE COURT: Not now. I'm not excluding the tape

1 permanently. I'm just saying, I'm exercising my discretion
2 under Rule 611 to control the scope and conduct of
3 examination, particularly with regard to cross-examination.
4 This is outside the scope of direct examination.

5 MR. BRYAN: That's understood, Your Honor, so
6 there's no need to bring Agent Radcliff back.

7 THE COURT: Okay.

8 Now, other issues we have to tend to?

9 MR. SOFER: Your Honor, I'll ask Mr. Herdman to
10 come up because most of the other issues relate to the
11 remaining witnesses in the case, and he has most of them.

12 THE COURT: I just want to get that e-mail. Give
13 me a second, please. Okay.

14 MR. SOFER: Judge, just so it's clear, we'll tell
15 Agent Radcliff not to return tomorrow.

16 THE COURT: All done for now?

17 MR. HARTMAN: We are.

18 MR. SOFER: We'll call our next witness.

19 MR. BRYAN: Oh, yeah, we're fine.

20 THE COURT: Okay. Let's take a look, I've also
21 got a motion here in limine, but let's deal with the stuff
22 from last night's e-mail.

23 MR. HERDMAN: Your Honor, most of what was in
24 last night's e-mail deals with what we expect to be the
25 testimony of Special Agent Gubanich regarding the

1 statements by Mohammed Amawi on the flight back from
2 Jordan. I think the first issue we've -- I think Mr. Ivey
3 would not object to the government -- we're happy to do it
4 either way, Your Honor, but photographs with Mr. Amawi in
5 restraints. Mr. Amawi's indicated he would like those
6 photographs to be shown in restraints, handcuffs.

7 THE COURT: In other words, without editing the
8 picture.

9 MR. IVEY: I'm not saying I want them to show
10 them. I'm just not objecting if the government decides to
11 use them.

12 MR. HERDMAN: Well, those are the photographs.
13 The second issue relates to presence on that flight of a
14 Secret Service agent, Your Honor. If you remember from the
15 hearing, there was -- there was a Secret Service agent that
16 was present on board during the flight back from Jordan.
17 In fact, notably, the Secret Service agent was the only
18 female that was on board that flight. That may -- you may
19 remember that specific fact as well. But the presence of
20 that Secret Service agent was specifically linked to
21 allegations that Mr. Amawi had threatened the President.

22 THE COURT: Unless you feel some urgency to bring
23 that out, I don't think it's necessary. I mean, do you
24 care one way or the other?

25 MR. HERDMAN: We'd like to have --

1 THE COURT: Is there occasional glancing blows
2 about it, but the fact that there was somebody from some
3 other agency there, big deal. I don't think it's necessary
4 to show why it was she was there.

5 MR. HERDMAN: I do have the agent prepped to
6 provide some mutual explanations that wasn't there that
7 doesn't reference any specific threats or allegations, Your
8 Honor.

9 THE COURT: And that would be sufficient,
10 something along the lines of Secret Service had an interest
11 in a portion of this case, without elaborating it. So why
12 do we even need that into why she was there. Who cares?
13 She's there. Big deal.

14 MR. HERDMAN: Your Honor, again, it's difficult
15 for us to do this sort of in a vacuum, and I think once we
16 get to the ultimate issue here, which is the voluntariness
17 issue, what instructions we'll give to this jury, I'll feel
18 a little more comfortable with what Agent Gubanich
19 testified to.

20 But the fact of the matter is, I think there were
21 about 11 or 12 people that were on that the FBI flight, and
22 I do feel it's necessary for the agent to go through to
23 sort of enumerate who was on this flight, and I would like
24 to do that on direct because I think Mr. Ivey might take a
25 crack at it on cross if I don't do so.

1 MR. IVEY: Your Honor, how do I say this? I
2 am -- I can guaranty I'm not going to ask one question as
3 to why a Secret Service agent was on the plane. The Court
4 has excluded those counts from this trial. I don't think
5 it helps Mr. Amawi's defense to have an explanation of why
6 the Secret Service agent was on the flight.

7 THE COURT: I will agree.

8 MR. IVEY: I won't open the door to that.

9 THE COURT: In which case, I'm going to instruct
10 the jury that the government, if it calls that agent, she
11 can obviously testify as to her -- her office as it were,
12 and she was present on the trip.

13 There were ten or 11 people on the plane, right?

14 MR. HERDMAN: Yes, Your Honor.

15 MR. IVEY: I believe as it relates to the
16 voluntariness issue, number one, I would just ask to see
17 whether I even raise this aggressively or not before we go
18 through.

19 THE COURT: I agree.

20 MR. IVEY: But assuming that I would do so, I
21 think from the suppression hearing transcript, it was quite
22 clear that the female agent was not present when the cavity
23 search, or whatever, was done of Mr. Amawi. And I can
24 guaranty I will not suggest in any way any question that
25 the female was present, if I decide to go down that road.

1 In fact, I'll even make it clear she wasn't, so again --

2 THE COURT: Excuse me, excuse me. Do you plan to
3 have that Secret Service agent testify?

4 MR. HERDMAN: No, Your Honor.

5 THE COURT: All right. Then, fine. There may be
6 mention that she was on the plane -- might even suggest
7 another government agent Judy Jones. I don't think it's
8 necessary to go to -- there were a couple illusions to
9 this. I'm trying to keep this out of the case because I
10 think it's apparent from --

11 MR. HERDMAN: Your Honor, that's fine.

12 THE COURT: And the defendants being ordered to
13 provide -- excuse me, delay -- we'll just have to wait and
14 see.

15 There was a chance you were going to get done
16 today or this week.

17 MR. SOFER: There is still a chance that we can
18 get done this week. What we're looking to avoid is the
19 kind of delays we had.

20 THE COURT: No, you won't.

21 MR. SOFER: That's mostly because we all want to
22 get home and continue our lives, at least I can speak for
23 myself. I just think it's inappropriate.

24 THE COURT: I understand. I understand
25 completely. I'll expect them -- I mean, if we get done --

1 if we get done at 8:45, then maybe we'll start at 11:00 or
2 whatever, but if we get done at 2:00, and I'll probably say
3 let's go home and start tomorrow.

4 MR. HARTMAN: Judge, then we're going to need a
5 better -- we're going to need a more definitive date for
6 the government to be finished so we can have some
7 subpoenaed witnesses ready to go.

8 THE COURT: Well, right now if the government
9 finishes by the time we adjourn on Friday, we'll start with
10 you on Tuesday, and I think we'll know that better tomorrow
11 how we're doing. I thought we'd get further along today.

12 MR. HERDMAN: Your Honor, I think I can
13 address -- I can try to address that as best as I can. And
14 I'll do this -- actually, I think all but one of the
15 next -- our last witnesses are mine. What I didn't want to
16 do was raise The Court's attention that we have a timing
17 issue with respect to Evan Kohlmann, and that issue is as
18 follows: I'll outline for you who I anticipate calling and
19 the order and how long I think their testimony is going to
20 take. Tomorrow morning, we're going to start with Special
21 Agent David Barns. I think his direct testimony will be 20
22 minutes, certainly no more than 30 minutes, and I don't
23 know how long the cross will go, but I don't anticipate it
24 will be very long.

25 Special Agent Gubanich will then testify, and I

1 anticipate his direct testimony will be about two hours
2 long.

3 THE COURT: Special Agent, who?

4 MR. HERDMAN: Gubanich, Your Honor. I anticipate
5 the cross maybe a little more lengthy, but certainly
6 nowhere near what we saw at least with Special Agent Coats.

7 And then in the afternoon I'd like to get to
8 Joseph Corrigan, who is the government's forensic computer
9 analyst. And his testimony, actually, I think, could
10 approach three hours, which means he would spill over
11 possibly into Thursday morning.

12 THE COURT: What's he going to talk about?

13 MR. HERDMAN: He is -- he's prepared to discuss
14 sources of a lot of the forensic computer evidence,
15 indications that certain evidence existed at one time or
16 was played at one time on various pieces of computer
17 evidence. It's fairly wide range of testimony, but I have
18 them -- it's kind of blocked into topics, Your Honor. And
19 I anticipate that he could be -- depending on how long
20 cross is, he could be done by Thursday morning, which
21 raises the following issue: Evan Kohlmann is not available
22 to testify on Friday, but we would -- we certainly want
23 him -- if we're going to finish this week, we want him to
24 testify on Thursday. Your Honor has limited the amount of
25 what he's going to testify to, so I don't anticipate that

1 cross will be very lengthy, but what I would ask for is The
2 Court -- I --

3 THE COURT: Well, you -- if you're done with the
4 forensic guy, fine. If you're not, interrupt his testimony
5 and explain to the jury, due to scheduling, we have to
6 interrupt him. That's fine with me.

7 MR. HERDMAN: And I guess what I'd ask for The
8 Court, if it takes a couple minutes past 4:30 for defense
9 counsel to finish their cross, I just would ask for, I
10 guess, your assistance in --

11 THE COURT: Sure.

12 MR. HERDMAN: -- getting this case on board.

13 THE COURT: And I will tell the jury that we're
14 doing this because we hope to finish with the government's
15 case tomorrow, which is a lot earlier than many of us
16 thought.

17 MR. HERDMAN: Okay. And then I think we can
18 finish on Friday with Robert Antu who is the translator.

19 THE COURT: Okay.

20 MR. HERDMAN: So assuming everything goes well we
21 should be done by Friday.

22 THE COURT: Okay. Now, let's assume you guys
23 start next Tuesday. Why don't you --

24 MS. CLEARY: Wednesday. You're in D.C. on
25 Tuesday.

1 THE COURT: Oh, that's right. Well, that may --
2 right now it looks as though next week 21, 22, and I think
3 23 are fine. All three days should be full days. I may
4 have another meeting about our building on the 27th, the
5 28th, and I'm told that I may have a building on the 30th.
6 So I think -- let me check on that Amy, okay, which of
7 those is more important.

8 MR. HARTMAN: We're off the 20th; is that
9 correct?

10 THE COURT: The 20th, yeah. We'll not have Court
11 on the 20th. I'm in D C.

12 But Amy, if you can remind me to check tomorrow.
13 I'll do that right now. Give me one minute, please. I
14 should be able to tell you tomorrow what the date is.

15 MR. HERDMAN: What is this?

16 THE COURT: The week of the 27th, the week before
17 the 27th, 28th, 29th, 30th. There are a couple of meetings
18 about our new building. I just sent an e-mail to find out
19 what's important there. They tend to be important.

20 MR. HERDMAN: And, Your Honor, I don't recall and
21 just -- Mr. Sofer just asked me this as well -- the
22 original trial order indicated a date by which the
23 government was to be provided with the defense witness
24 lists. I thought that it was a week prior to the beginning
25 of the defense case, but that -- my -- my recall has been

1 slighted throughout this case.

2 THE COURT: Why don't you -- can you get them
3 your witness list by Friday, at least your first week's
4 worth of witnesses?

5 MR. HARTMAN: Yeah. I believe we can. I don't
6 know that we're going first yet. We need to discuss that
7 with them, but, yes we can.

8 THE COURT: The defendants will be expected to
9 provide the list that was anticipated of witnesses and the
10 exhibits it expects to -- or anticipates offering. I
11 realize the word anticipates, I understand that there may
12 be changes, but in good faith, this week, on Friday, for
13 next week, but -- and then the following week thereafter on
14 Thursday by noon, so that gives you three or four days to
15 figure out. It's -- it's a movable fees. One of those --
16 all these dates are in the calendar.

17 Now, the expert reports, what's -- where are you
18 with -- obviously, three experts have been excluded. Are
19 there other experts?

20 MR. HARTMAN: We won't -- we'll have a computer
21 expert. We won't -- we provided preliminary reports as
22 we've gotten them, but I don't know that we have a final
23 report until their expert testifies --

24 THE COURT: Okay.

25 MR. HARTMAN: -- that I can -- that I can

1 produce. And as soon as I get it, we'll produce it.

2 MR. SOFER: Judge, I just don't -- both the
3 witness list issue and the expert reports, I don't know,
4 I'm not the case lawyer, but I think if we could get a
5 final report at some point before --

6 THE COURT: I do think that with regard to the
7 computer expert, to the extent that his testimony may take
8 into account what your expert says, that's pretty
9 conventional. I suspect you would rather have -- you would
10 like to know what he has to say about that rather than
11 having him say A, B, C, oh, and by the way, B, D, F, in
12 light of what's been said.

13 MR. SOFER: I understand. Again, we've sort of
14 got a hodge podge of preliminary reports. We're just
15 trying to get some certainty here so we know how to
16 proceed.

17 MR. BOSS: If I may, Judge?

18 MR. HARTMAN: So do we on one of --

19 MR. BOSS: In terms of the computer forensic
20 expert we've been using, the government has been provided
21 all work that has been done. If there is additional work
22 that occurs between now and then, based on the testimony of
23 the government expert witness, that will become
24 incorporated into a final report, and we'll provide it to
25 you --

1 THE COURT: As promptly as reasonably --

2 MR. BOSS: -- as soon as we have it.

3 THE COURT: -- possible. As soon as you have it.

4 MR. BOSS: Yes, sir.

5 THE COURT: Okay. Research issue what, if any,
6 instruction should be given to the defense
7 cross-examination of Gubanich that suggests improper
8 conduct.

9 MR. HERDMAN: Your Honor, found nothing in the
10 Sixth Circuit pattern jury instructions with respect to the
11 voluntariness of statements Mr. Amawi -- instructions on
12 voluntariness.

13 THE COURT: If you have a proposed instruction
14 that you found somewhere, send it to everybody.

15 MR. HERDMAN: I can do that.

16 THE COURT: We'll go from there.

17 MR. HERDMAN: I guess before I -- before I
18 finalize what Agent Gubanich is going to be asked on direct
19 examination now, I'd like some idea whether The Court would
20 be in favor of providing an instruction -- this jury is
21 allowed -- obviously allowed to consider the voluntariness
22 of his statements. However, The Court has already made a
23 finding as a matter of law that these statements were made
24 voluntarily. And if you remember, Your Honor, at the
25 hearing there were certain issues regarding -- statement

1 regarding attorney -- Court found there was not an
2 equivocal request or an unequivocal request for counsel.
3 And -- and the government's position is that if -- if the
4 voluntariness instruction is given to this jury, the jury
5 should also know The Court, as a matter of law -- obviously
6 different than what the jury's going to be asked to find,
7 but as a matter of law, there was a finding that there was
8 nothing improper about the way that Mr. Amawi was
9 Mirandized or the way these statements were taken.

10 MR. IVEY: Your Honor, I told the government that
11 it's not my intention to rehash the suppression hearing
12 that I've got an adverse ruling on by The Court, and I
13 don't think it behooves Mr. Amawi's defense for me to
14 suggest all this stuff and then have you turn around and
15 say he is wrong. So my only request is this, is that if an
16 instruction is given to The Court as I've told the
17 government, that The Court does not give that instruction
18 until after my cross to see if I open the door.

19 THE COURT: Yeah, I think that's quite correct.

20 But anyway, if you have an instruction, proposed
21 instruction, circulate it, and we can talk about it. I
22 would be inclined to wait and see what happens. And about
23 as far as I might go would be -- I think I never
24 encountered this before -- something to the effect that,
25 ladies and gentlemen, although on consideration of various

1 factors, comma, I have concluded that you should hear the
2 testimony about the conversation between Mr. Amawi and one
3 or more of the agents while he was in custody, and
4 nonetheless, as a matter of law, a final determination
5 whether or not those statements were made knowingly,
6 intelligently, and voluntarily is for you to determine in
7 light of all the evidence and circumstances, all the
8 evidence related to the circumstances which any statements
9 were made by him, something like that.

10 I'm sure there is more elaborate and elegant out
11 there somewhere, and Mr. Ivey, I simply wait and see what
12 all you get into.

13 MR. IVEY: Yeah, I'm not saying I won't touch on
14 those facts, but I would just like the opportunity not to
15 open the door before The Court presumes I'm going to open
16 the door.

17 MR. HERDMAN: Your Honor, I guess the
18 government's position is we may have to open that door
19 before Mr. Ivey gets a chance to do so based on the fact --
20 if we knew, for instance, that -- and I realize Mr. Ivey
21 can't answer this question necessarily -- but I'm in a
22 position now where we have to decide whether or not it's
23 best to ask Mr. Gubanich -- or Agent Gubanich everything we
24 should ask about all the circumstances of his statement
25 before Mr. Ivey gets into it on cross. And I can't expect

1 him to answer that. All I can do is just highlight for The
2 Court the position that we are in with respect to this
3 issue.

4 THE COURT: And in any event, the testimony is
5 not likely to take all that long, and I really think it's
6 appropriate to wait and given an instruction at the end of
7 his testimony, and also, if you have rebuttal as well. And
8 always, I say simply by instruction, in response to juror
9 request for sort of a formal statement, ladies and
10 gentlemen, you can make your mind up, but I've already made
11 my mind up. It's okay.

12 I don't think that's what Mr. Ivey would like to
13 have me say, and I don't think it would be appropriate for
14 me to say so. So I'm saying again, if you find any
15 instructions out there, if this has come up in the past
16 some place, just commonly, I just haven't encountered, so.

17 MR. SOFER: Judge, the very specific issue in the
18 end, which is the request for a lawyer, when it's -- when
19 it's an equivocal request to a layperson hearing it, they
20 say, would you -- he asked for a lawyer and they didn't
21 give him one. And that issue specifically has been decided
22 as a matter of law. The voluntariness issue is a whole
23 different kettle of fish.

24 THE COURT: And I might well consider saying
25 something to the effect, you heard testimony that

1 Mr. Amawi -- I can't remember exactly what it was -- you
2 should understand that I think this would probably be
3 appropriate, that it was not -- I indicated -- I instruct
4 you that it was not improper for the government to continue
5 questioning and talking to Mr. Amawi after he made that
6 request because it did not constitute an unequivocal
7 request for a lawyer, and law enforcement officer doesn't
8 have to guess what a reference may mean. However, you
9 should also understand, you can take that into
10 consideration when considering the totality of the
11 circumstances and whether or not you find beyond a
12 reasonable doubt or a preponderance --

13 MR. SOFER: Preponderance.

14 THE COURT: That's what I thought. I think
15 you're right. Where it's more likely than not it was
16 knowingly, intelligently, and voluntarily.

17 MR. IVEY: Your Honor --

18 THE COURT: Just give me enough -- just give me
19 some play dough to work with here.

20 MR. SOFER: Understood. And again, that's, I
21 think the -- if counsel's not planning on going down the
22 road, then neither will we, and we can put this aside, but
23 I think The Court can understand why it would be of some
24 concern to us.

25 THE COURT: Sure.

1 MR. IVEY: Your Honor, the only thing is maybe
2 The Court -- my -- my issue is not whether or not whatever
3 an instruction says, it's when it's given, and I would just
4 like it to be given after --

5 THE COURT: Let me say it for the third time.
6 I'm not going to give it until no further questions and
7 Agent you may step down. May we approach, yes. Ladies and
8 gentlemen, you just heard the testimony of Agent Gubanich
9 about this and that.

10 This is what you do, this is what I do, okay?
11 Because I agree with Mr. Ivey. I agree with the -- it
12 would be inappropriate to sort of -- the jury, in the final
13 context, will understand what I'm talking about.

14 Okay. You guys gave me a motion. I think we've
15 touched on all -- you're --

16 MR. HERDMAN: This actually -- the motion in
17 limine was just filed this afternoon -- touches directly
18 upon the testimony that we need to introduce tomorrow.

19 THE COURT: And let's take a look at that.

20 Okay. Remind me what Kohlmann is going to
21 testify about, at least in light of what he's --

22 MR. HERDMAN: The subject of the motion in limine
23 that's pending before The Court is not going to be part
24 of --

25 THE COURT: I didn't think so.

1 MR. HERDMAN: We actual truly never proffered
2 that at this point in time.

3 THE COURT: If it's not Kohlmann, what else --

4 MR. WHITMER-RICH: If they're not being proffered
5 then --

6 MR. HERDMAN: No. The photos certainly are, Your
7 Honor, but we don't --

8 THE COURT: Kohlmann's not --

9 MR. HERDMAN: -- we didn't feel a need to call
10 Evan Kohlmann to explain these photos; however, in light of
11 counsel's arguments in motion, if -- depending how The
12 Court is viewing this evidence and how Your Honor's willing
13 to rule on this, having Kohlmann certainly does have
14 different layer of explanation to these particular photos,
15 but we are prepared to proceed without Evan Kohlmann even
16 addressing the issue of these photos, Your Honor.

17 THE COURT: How and when are we proposing to
18 offer the photos themselves without Kohlmann's testimony,
19 if you were?

20 MR. HERDMAN: The photos were going to be offered
21 through Special Agent Gubanich tomorrow, Your Honor. He
22 has conducted a thorough review of all the computer
23 evidence collected in this case.

24 THE COURT: And they are probative as to?

25 MR. HERDMAN: They are probative as to Mohammed

1 Amawi's intent, certainly with respect to the 956 charge,
2 Your Honor, and I would also add with respect to the 2339A
3 charge, and also with respect to expect to the distribution
4 charge.

5 What -- what the photos depict, and it may assist
6 The Court if you see the actual photos themselves. I can
7 bring them up on the screen here, if I can have just a
8 moment.

9 (Photos being shown.)

10 MR. HERDMAN: And the next one is AS. And for
11 the record, Your Honor, the government is displaying --
12 these are Government Exhibits 124-1AV, AS, AT, and AU.

13 THE COURT: Okay. And Mr. Whitmer-Rich,
14 Kohlmann's not going to testify about these, why shouldn't
15 these come in on their own?

16 MR. WHITMER-RICH: I believe that they just --
17 there's no -- there's no context for what the
18 photographs -- what the meaning of the photographs is.
19 There's no testimony about circumstances of what -- when
20 the photographs were taken, who was taking them, anything.

21 MR. HERDMAN: Your Honor, with respect to when
22 the photos were taken, counsel raises a motion effecting
23 alternative explanation for those photos. Our forensic
24 computer examiner will be on the stand and will be able to
25 either verify or testify himself as to when these photos

1 were created. So there's sort of a alternative explanation
2 to all of these.

3 However, the government's explanation, these are
4 highly probative of the defendant's intent to martyr
5 himself. And you've already heard, Your Honor, significant
6 evidence about -- respect to Mohammed Amawi's intent to
7 become Shahiid or a martyr, and it goes directly to the
8 distribution charge in this count, the construction of a
9 suicide vest. It goes directly to the conspiracy charge
10 and that Mohammed Amawi wanted to go overseas to kill
11 others by his own hand, if need be. And it goes directly
12 to the 2339A charge.

13 THE COURT: Let me hear from him.

14 MR. BRYAN: Your Honor, if I may, these are
15 photographs of Mohammed Amawi laying in a purported coffin.
16 If you look at the one photograph, there's actually two of
17 those boxes on top of each other. The boxes are underneath
18 the stairs of the mosque in Jordan. The picture was taken
19 by a friend of Mohammed Amawi, and in sort of a joking
20 manner. The -- basically, Mr. Amawi was lying in this box
21 catching some extra shut eye, or whatever, during a period
22 of time while he was in the mosque in Jordan. The
23 government wants to draw inferences from these photographs
24 that are so far reaching that they would -- they would just
25 blow the doors right off this case as it relates to 403.

1 The probative value of these photos is minimal
2 compared to the prejudicial effect that it would have. I
3 mean, they say that Mr. Amawi said that he wanted had to be
4 a martyr. According to the testimony of Darren Griffin,
5 however, there's other tapes played by the government's own
6 case that Mr. Amawi said that I would never want to be a
7 suicide bomber, that I want to live to fight the long
8 fight, that I want to be a sniper, that I want to be
9 someone who knows how to fight from afar, not to be up
10 close.

11 And what the government's trying to do through
12 the introduction of these photos, a lot of people made --
13 they have everything that this man has, Your Honor, as it
14 relates to his computer. Every computer file that this man
15 ever had on his computer, they have. And for them to be
16 able to go in and pull out of there some -- could be
17 looking photographs and then be able to argue to the jury
18 later on that this man was on a suicide mission, that he
19 was going to do that, is clearly -- probative value of that
20 is outweighed by the danger of unfair prejudice.

21 The photographs that were taken on October 31st.
22 For all intents and purposes, it could have been Mr. Amawi
23 with his buddies just screwing around acting like he was
24 laying in a coffin like a vampire or something on
25 Halloween, on October 31st. Those are alternative

1 explanations that we could make to the jury. But by the
2 same token, Your Honor, we shouldn't have to make those
3 alternative explanations because the probative value of
4 this is so small compared to the danger of undue prejudice.

5 We'll comment a little bit on what Mr. Kohlmann
6 said as it related to these photographs, even though the
7 government doesn't intend to use Mr. Kohlmann just to
8 show -- short of not only the absurdity of the government's
9 position on this point.

10 THE COURT: You're not going to reference
11 anything Kohlmann said, because if you do, he's going to
12 come back and testify. You can't say the government has a
13 witness that the judge wouldn't let you hear from who said
14 this -- and that's silly. You can't --

15 MR. BRYAN: Your Honor, I'll stay away from Evan
16 Kohlmann, Your Honor. If he's permitted to testify in this
17 area --

18 THE COURT: I don't expect that he would be, and
19 Mr. Herdman has indicated he won't.

20 MR. HERDMAN: And certainly on our direct case,
21 Your Honor, but we would reserve -- depending how the
22 defense case goes, we would reserve the availability.

23 THE COURT: I'll deal with that. That's a couple
24 of hills and valleys over the horizon.

25 MR. BRYAN: What the government's trying to do is

1 to present the evidence without us being able to challenge
2 it with the threat that Mr. Kohlmann would be able to come
3 back later on and explain, you know, some theory that
4 Mr. Kohlmann had that I don't believe is even supported by
5 Mr. Kohlmann's own research.

6 THE COURT: Well, candidly, I'm going to overrule
7 the motion. And the reason I'm going to do that is, it
8 seems to me similar photographs, in looking at it in a much
9 more common kind of case, involving drug charges or
10 defendants charged with drug charges, shown posing on piles
11 of money or with guns or whatever. And I think that
12 evidence is admissible in that situation, and I think this
13 is admissible in this situation. And I will -- taking the
14 403 issues into account, I will overrule the motion in
15 limine. Obviously, I don't expect Kohlmann's going to say
16 a word about this stuff in whatever he says.

17 Mr. Ivey?

18 MR. IVEY: Your Honor, I'm sorry, I wanted to
19 kind of throw my two cents in, if I can, just make it for
20 the record.

21 THE COURT: Sure.

22 MR. IVEY: I think I've had drug cases like that,
23 but generally, the defendants are posing with the
24 coconspirators and there's been -- from a practical
25 standpoint, there's been no testimony from Mr. Griffin that

1 Mr. Amawi said I made my martyr photos, here they are, to
2 Mr. Griffin, and that he, in their many viewing sessions,
3 looked at them.

4 There's been no testimony that any of the other
5 co-defendants either took the photos or where the photos --
6 that Mr. Amawi showed them the photos. There's been no
7 testimony to testify that I took the photos of Mr. Amawi,
8 he asked me to do it. They're just photos without that
9 context, in the context of any relevance in this case. And
10 for that reason, I think that they should be excluded and
11 that's why unfair prejudice comes in without any
12 involvement of -- or co-defendants in any way in these
13 photographs or any words from Amawi in these tapes, or
14 otherwise, or in his conversations, or whatever, that any
15 referencing these photos, so --

16 THE COURT: Well, I do think that they're
17 probative on the issue of intent, and they -- obviously,
18 I'll give a limiting instruction.

19 MR. BOSS: Thank you, Judge.

20 On behalf of Defendant El-Hindi, we would, at
21 this time, also ask that those photos not be admitted.
22 We're, unfortunately, getting hit as collateral damage in
23 this photograph, something that Mr. El-Hindi had no
24 knowledge of or awareness of. I believe that the
25 inflammatory nature of this can do us serious damage, and

1 we would join in the request that they not be permitted.

2 THE COURT: I disagree. I think a cautionary
3 instruction would avoid any adverse effect on either
4 Mr. Masloun or Mr. El-Hindi, but I do think they're
5 probative in light of all the evidence in the case.

6 MR. HERDMAN: Your Honor, the motion continued
7 into the second paragraph, also, which dealt with -- I
8 don't really -- didn't point to any specific computer
9 items, but there was a second half to this motion.

10 THE COURT: Right.

11 MR. HERDMAN: Without knowing specifically what
12 it is counsel objects to, I'm at a little bit of a
13 disadvantage with respect to responding. I would point out
14 that there are a number of files that the government
15 intends to introduce over the next day and a half, two
16 days, that we anticipate will be linked to Mr. Amawi. And
17 I, rather than dealing with the objections as they come up,
18 if counsel can point to specific files that they object to.

19 THE COURT: To the extent that -- and I've
20 already in response to -- or not response to Mr. Ivey, and
21 I apologize to that. I do not think that a foundation
22 through Mr. Griffin is necessary as items that were found
23 in Mr. Amawi's presence, in his custody, and possession, in
24 Mr. Amawi's possession on his computer. And I don't think
25 any further foundation is being -- with regard to those.

1 Now with regard to the sort of generic motion as
2 it relates to the computer evidence --

3 MR. BRYAN: Your Honor, Mr. Whitmer-Rich will
4 address that. Just one last thing for the record as
5 relates to these photographs, Your Honor. This puts us in
6 a position, I believe, that would require us to be able to
7 call -- excuse me, Your Honor -- an Islamic scholar, an
8 Islamic expert, to be able to explain that, first of all,
9 people in Islam do not get buried in coffins. There's no
10 such thing as a coffin burial in Islam. These are not
11 coffins. They were carrying cases or things that are used
12 sometimes to carry bodies to the graveyard, sometimes to be
13 used for other purposes as well. They have handles on
14 them.

15 But for them to -- for the government to be able
16 to present this evidence without an explanation that people
17 don't get buried in coffins in Islam without an explanation
18 that, according to Mr. Griffin, Mr. Amawi said that he
19 wanted, you know, to go the way of the Shahid, the way of
20 the martyr, to die in -- and to die in the manner that
21 is -- that serves God -- God's purpose, isn't the same as
22 saying to die as a suicide bomber, so to speak.

23 What the government's trying to gain through
24 these photographs, without any evidence to buttress this
25 claim or to buttress this inference, is this ghastly

1 inference that our client lying in a coffin means that he
2 intended to commit suicide. And we have no way to defend
3 against that inference without being able to call some sort
4 of cultural expert to be able to explain that.

5 THE COURT: Okay. And if you have an expert that
6 can do so, get them a report promptly and go from there.
7 Basically, in light of what you told me, I'd be inclined to
8 say, fine, that person could probably testify. That might
9 well prepare, in a way, that Mr. Kohlmann to -- way for him
10 to testify, but I'm not saying that that would be the case.
11 I'm just saying that would be the government's request in
12 rebuttal, but that's up to you and up to them.

13 Certainly -- if you have somebody who's in a
14 position to testify to that, certainly, that clearly is an
15 appropriate response to the admission of those photographs.
16 And if that, in fact, is a custom and practice, something
17 that the jury clearly would not be familiar with, and would
18 be, seems to me, properly informed.

19 MR. HERDMAN: Your Honor, the government would
20 just reserve -- at this point, reserve any objection to
21 what Mr. Bryan said until we get the actual report.

22 THE COURT: Absolutely. I hear what you're
23 saying. Get the expert, get the report, and I'll rule on
24 it. But I -- my instinct on this is, yeah, that's -- I
25 think they're entitled to offer an explanation that is well

1 founded in a witness' experience. In some religions,
2 people are to be buried within 24 hours, if that's an
3 important issue and the appropriate testimony in that
4 regard.

5 MR. HERDMAN: All I'll say, Your Honor, is that
6 the government's fairly confident that we have evidence
7 that will rebut any such assertion.

8 THE COURT: Whatever.

9 MR. HERDMAN: Just putting counsel on notice.

10 THE COURT: The other computer stuff, what else
11 were you shooting at in this motion?

12 And Angela really has to leave very promptly.

13 MR. WHITMER-RICH: I understand, and I suppose
14 it's general because I don't know all of what they do
15 intend to introduce. I guess the concern is that
16 introduction of files was found on this date, without any
17 evidence that we know who viewed it or who put it there or
18 anything like that; that's the general concern.

19 THE COURT: That seems to me to go to weight and
20 not admissibility. Candidly, it seems to me -- again, I
21 haven't encountered this, so I can't cite it chapter and
22 verse -- but analogy to the extent that they are probative
23 and relevant, they are admissible, kind of like an
24 admission of a party opponent. He has certain stuff that,
25 if otherwise pertinent or probative, would have in their

1 possession. It's probably admissible, even though you
2 don't know who took it or whether it was looked at or not,
3 that goes to weight.

4 We don't -- you know, especially if there's a
5 computer expert that said -- and I don't know whether there
6 is such a person but if so that's fine -- which you can
7 download stuff like this without even looking at it. I
8 don't know. Or if you can't, you can't. It's probative
9 that at one point, at least to some extent, it makes it
10 more likely than not and contributes to the other all
11 government -- that this stuff could not be downloaded
12 without it being viewed by the person doing the
13 downloading, I think the government's entitled to have
14 someone testify to that effect.

15 But -- so my point is, I don't see any specific
16 objection here and we'll deal with that.

17 MR. WHITMER-RICH: We'll raise the specific
18 objection.

19 THE COURT: Yeah, as they come in.

20 MR. WHITMER-RICH: Thank you, Your Honor.

21 THE COURT: How much of the volume of stuff do
22 you expect or can you tell them this evening perhaps which
23 images or materials you expect to offer?

24 MR. HERDMAN: I can say, generally, that I think
25 through Agent Gubanich, there will probably be about 20

1 files perhaps, maybe 25 files.

2 THE COURT: And what do they consist of, videos
3 or stills or?

4 MR. HERDMAN: There are four videos in particular
5 that I can remember, and there are about 15 manuals,
6 English language manuals.

7 THE COURT: Okay. Is there anything else you
8 need to talk about tonight? At least that needs a court
9 reporter and Amy.

10 MR. HARTMAN: If you will, Judge, very quickly.
11 I just want to make clear that the extent of Kohlmann's
12 testimony is whatever definitions can't be stipulated; is
13 that correct?

14 MR. HERDMAN: No, Your Honor.

15 THE COURT: Go ahead.

16 MR. HERDMAN: We're not just limited to
17 definitions. We had a lengthy discussion about this a
18 couple weeks ago, and I --

19 THE COURT: Remind me.

20 MR. HERDMAN: I went through specific exhibits.

21 THE COURT: Let's talk about that sometime
22 tomorrow.

23 MR. HARTMAN: That's fine.

24 THE COURT: And I'm going to say this: Whatever
25 you haven't decided by noon tomorrow with the definitions,

1 that's what we've got and where we are, okay. We've got to
2 put an end to this at some point.

3 MR. SOFER: Judge, one final thing, about a week
4 and a half ago counsel brought to our attention a 302 which
5 referenced questions that have been sent back and forth,
6 specifically some that may have been sent to Darren
7 Griffin, and we told -- and we submitted something to The
8 Court at that time. The Court looked at it, turned out
9 there was nothing discoverable in it.

10 At that juncture we said we were going to look
11 for any other that have been sent to Mr. Griffin. We have
12 found another set of those questions and would like to
13 submit them to The Court with a little key on them about
14 who's writing and is who is, under the same theory that
15 they are not discoverable. They are not inconsistent with
16 any testimony and that they need not be turned over.

17 THE COURT: Do you have that now?

18 MR. MILLER: Yeah, with one caveat, there is some
19 handwriting for which we couldn't identify who actually
20 wrote that.

21

22

23

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s:/ Angela D. Nixon

Angela D. Nixon, RPR, CRR

Date

I N D E XWitnessPage

Michael Stewart

(Direct Examination)

4659

(Cross Examination)

4662

David Lamberger

(Direct Examination)

4665

Charles Holloway

(Direct Examination)

4670

William Radcliff

(Direct Examination)

4698

(Cross Examination)

4722

(ReDirect Examination)

4805